

EXHIBIT 13
Excerpts from
Tim Kelly
Deposition, Vol. I,
10/25/18

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ESTATE OF TASHI S. FARMER a/k/a)
TASHII FARMER a/k/a TASHII BROWN,))
by and through its Special)
Administrator, Lorin Michelle)
Taylor; TAMARA BAYLEE)
KUUMEALIMAKAMAE FARMER DUARTE, a)
minor, individually and as)
Successor-in-Interest, by and)
through her legal guardian,)
Stevandra Lk Kuanoni; ELIAS BAY)
KAIMIPONO DUARTE, a minor,)
individually and as Successor-in-))
Interest, by and through his)
legal guardian, Stevandra Lk)
Kuanoni,)

Plaintiffs,)

vs.)

Case No.

2:17-cv-01946-JCM-PAL

LAS VEGAS METROPOLITAN POLICE)
DEPARTMENT, a political)

(Caption continued on page 2.))

VIDEOTAPED DEPOSITION OF ASSISTANT SHERIFF TIM KELLY

Las Vegas, Nevada

Thursday, October 25, 2018

Volume I

Reported By:

BARBARA R. JUSTL

CCR No. 878

Job No. 3058586A

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<p>1 Sometimes that doesn't work out, and if I should 2 transgress, I will apologize. But it's easier to move 3 forward if we each speak independently of the other, 4 partly because of courtesy and partly because it's 5 difficult for the court reporter to take down two people 6 who are speaking at the same time. 7 Do you understand? 8 A Yes. 9 Q Just as you've been doing nicely up to now, please 10 continue to answer out loud. Such common expressions as 10:07:57 11 "huh-uh" or "uh-huh" or shakes of the head or nods of the 12 head are too difficult to interpret by the court 13 reporter, so they would lead me to have to ask questions 14 like, "Do you mean yes," "Do you mean no." So to avoid 15 that, please continue to answer out loud. 16 Will you do that? 17 A Understood. 18 Q Have you taken any kind of medication or any kind 19 of substance that would affect your ability to give your 20 best response here today? 21 A No. 22 Q Is there any kind of life stress that you're 23 under, other than taking a deposition, that would affect 10:08:27 24 your ability to give your best response here today? 25 A No.</p> <p style="text-align: right;">Page 10</p>	<p>1 A No, sir. 2 Q As I said at the outset, I don't expect this to be 3 a lengthy deposition. However, if at any time you wish 4 to take a break, use the facilities, talk to your lawyer, 5 whatever you want to do, stretch your legs, just let me 6 know and your request will be honored. 7 The only thing I'd ask is if there is a question 10:09:58 8 pending, please answer the question before we take the 9 break. Will you do that, please? 10 A Yes, sir. 11 Q All right. What is your present profession or 12 occupation? 13 A I'm assistant sheriff, and I run the law 14 enforcement operations group for the Las Vegas 15 Metropolitan Police Department. 16 Q What is the law enforcement group? 17 A So in a nutshell, I'm responsible for all crime in 18 the valley. I have nine substations and three support 19 bureaus. 10:10:28 20 Q All right. Where I come from, we have a sheriff's 21 department and we have a police department, and what I've 22 learned here is that you basically have unity. You have 23 unification between the sheriff and the police 10:11:00 24 department, correct? 25 A Yes, sir.</p> <p style="text-align: right;">Page 12</p>
<p>1 Q In the course of the deposition, I may ask you 2 questions that have to do with time, distance, that sort 3 of thing. You may or may not have an exact answer to the 4 question that I've asked you. If you don't have an exact 5 answer, I'm entitled to your best estimate. 6 Do you understand that? 7 A Yes. 8 Q But if it is simply a guess, I'm not entitled to 10:08:56 9 have you guess. 10 Do you understand that? 11 A Absolutely. 12 Q The difference between a guess and an estimate is 13 not always clear, but to use a very simple simplistic 14 example, if I asked you to estimate the length of the 15 table that is before us, you can see it, you have a life 16 experience with feet and inches or meters and 17 centimeters. You can probably give a reasonable estimate 18 of the length of the table. 19 If I asked you to estimate the length of my dining 20 room table in my home in Irvine, California, it would 10:09:26 21 have to be a guess because you've never been there. 22 You understand? 23 A Never seen it, yes. 24 Q That's right. All right. 25 Do you have any questions before we commence?</p> <p style="text-align: right;">Page 11</p>	<p>1 Q So as I understand it, Sheriff Lombardo is the 2 sheriff? 3 A Yes, sir. 4 Q And I assume assistant sheriff would be one step 5 down from him? 6 A One step down is the under sheriff, and by rank 7 I'm the number three. 8 Q Who is the under sheriff, please? 9 A Kevin McMahonill. 10 Q Now, are there more than one assistant sheriffs? 10:11:29 11 A Yes, sir, there's a total of three of us. 12 Q And who are the other two ladies or gentlemen? 13 A The two gentlemen are Assistant Sheriff Charles 14 Hank and Assistant Sheriff Brett Zimmerman. 15 Q Can you tell me what are the responsibilities of 16 Charles Hank? 17 A Charles Hank is the assistant sheriff over the 18 jail, and Brett Zimmerman runs investigations. 10:11:59 19 Q Could you tell me about your educational 20 background, beginning with college? 21 A So I'm currently enrolled at Columbia Southern 22 working on my Bachelor's in criminal justice, and I 23 graduated from high school in Las Vegas here in 1985. 24 Q When did you go to work for the Metropolitan 10:12:26 25 Police Department?</p> <p style="text-align: right;">Page 13</p>

<p>1 A In 1989.</p> <p>2 Q I assume your initial role was as a patrolman?</p> <p>3 A Yes, sir.</p> <p>4 Q And you went through the normal academy?</p> <p>5 A Yes.</p> <p>6 Q Tell me, please, about how long first you remained</p> <p>7 as a patrolman before you got a promotion.</p> <p>8 A I was a patrolman from 1989 to 1998 when I was</p> <p>9 promoted to sergeant, and then in 2007 I was promoted to</p> <p>10 lieutenant. In 2013 I was promoted to captain. 2015 I 10:13:00</p> <p>11 was promoted to deputy chief, and a year later I was</p> <p>12 promoted to assistant sheriff in 2016.</p> <p>13 Q A meteoric rise, I would say. Very impressive.</p> <p>14 Now, is part of your responsibility the Tactical Review</p> <p>15 Board?</p> <p>16 A Not currently, but at that time of this incident, 10:13:28</p> <p>17 yes.</p> <p>18 Q I'm going to show you a document which I'll mark</p> <p>19 as Plaintiff's 1 for identification. It is a memorandum</p> <p>20 to Sheriff Joseph Lombardo. I have -- you have one,</p> <p>21 okay, good. I have two more for the next two deponents, 10:13:56</p> <p>22 so --</p> <p>23 MR. McNUTT: I've got it.</p> <p>24 MR. SAYRE: Okay, good.</p> <p>25 MR. McNUTT: Did you say we're marking this as</p> <p style="text-align: right;">Page 14</p>	<p>1 A Let's see. I got promoted in '16. Maybe a year 10:15:34</p> <p>2 or so, year-and-a-half.</p> <p>3 Q Now, this particular memorandum is dated August</p> <p>4 24th, 2017, and it's regarding the incident dated May</p> <p>5 14th, 2017.</p> <p>6 Approximately when did you start as the chair of</p> <p>7 the Tactical Review Board? 10:16:00</p> <p>8 A I believe it was in '16 when I got promoted to</p> <p>9 assistant sheriff. I don't have the exact date.</p> <p>10 Q Did you become the chairman of the Tactical Review</p> <p>11 Board as a result of being promoted to assistant</p> <p>12 sheriff?</p> <p>13 A Yes. I took over the role as the chair.</p> <p>14 Q Had you ever served on the Tactical Review Board</p> <p>15 prior to becoming assistant sheriff?</p> <p>16 A Yes.</p> <p>17 Q Tell me when you first began to serve on the 10:16:29</p> <p>18 Tactical Review Board.</p> <p>19 A That was probably in 2014, '15, when I was the</p> <p>20 bureau commander as a captain in the academy.</p> <p>21 Q What is meant by being a bureau commander?</p> <p>22 A That is the rank of captain.</p> <p>23 Q And you were connected with the academy? 10:16:58</p> <p>24 A Yes, sir.</p> <p>25 Q And what did you do with regard to the academy?</p> <p style="text-align: right;">Page 16</p>
<p>1 Exhibit 1?</p> <p>2 MR. SAYRE: I did.</p> <p>3 (Deposition Exhibit 1 marked.)</p> <p>4 BY MR. SAYRE:</p> <p>5 Q Have you seen this document before?</p> <p>6 A Yes, sir.</p> <p>7 Q Looking toward the back, on the last page, if you</p> <p>8 look down at the lower right-hand corner, there is a</p> <p>9 Bates stamp that says LVMPD 3782. Do you see that? 10:14:26</p> <p>10 A Yes.</p> <p>11 Q Looking at that page, there is a signature that</p> <p>12 seems to be your signature, but I need you to identify</p> <p>13 it. Is that your signature?</p> <p>14 A That's my signature.</p> <p>15 Q And it says, "Assistant Sheriff Tim Kelly, Chair,</p> <p>16 LVMPD Tactical Review Board," correct? 10:14:58</p> <p>17 A Yes, sir.</p> <p>18 Q What does that mean?</p> <p>19 A That I chair the review of the tactics used in</p> <p>20 the -- whatever particular use of force that we may be</p> <p>21 reviewing that particular day.</p> <p>22 Q Now, you said you don't do that now?</p> <p>23 A No, sir.</p> <p>24 Q How long were you the chair of the Tactical Review</p> <p>25 Board?</p> <p style="text-align: right;">Page 15</p>	<p>1 A I just oversaw the training aspects for the</p> <p>2 organization.</p> <p>3 Q You were in charge?</p> <p>4 A Yes, sir.</p> <p>5 Q So -- but bureau commander is the equivalent of</p> <p>6 captain?</p> <p>7 A Captain or director, sir.</p> <p>8 Q Okay.</p> <p>9 A Civilian version director.</p> <p>10 Q All right. How long were you the captain or</p> <p>11 bureau commander of the academy?</p> <p>12 A So I got promoted to chief in '15, so it was 10:17:28</p> <p>13 probably a year or less than a year, somewhere along in</p> <p>14 there.</p> <p>15 Q What is the role of the Tactical Review Board?</p> <p>16 What do they do?</p> <p>17 A Is to evaluate the tactics that are rendered --</p> <p>18 basically the findings from the CIRT process, and we have</p> <p>19 the ability to validate, overturn or modify those 10:17:54</p> <p>20 conclusions presented by the CIRT board.</p> <p>21 Q Okay. Who is the CIRT board?</p> <p>22 A So CIRT is the Critical Incident Review Team. For</p> <p>23 lack of better words I use "board," but it's the Critical</p> <p>24 Incident Review Team, and they review all of the tactics</p> <p>25 and training associated with a use of force.</p> <p style="text-align: right;">Page 17</p>

<p>1 Q Okay. So please correct me if I'm wrong, but the 2 CIRT team does the initial review of a use of force? 3 A So we have a FIT team, Force Investigative Team. 4 Q F-I-T? 5 A F-I-T, that reviews the force, and then the deadly 10:18:28 6 force aspects of it from the criminal side, and then 7 internally CIRT reviews the tactics, training, policies 8 and procedures associated with the use of force. 9 Q So CIRT would review tactics, training, policies 10 and procedures, whether deadly force was used or not? 11 A Yes, sir. If it's an incident that rises to that 10:19:00 12 level, then CIRT would investigate those four categories. 13 Q The Force Investigation Team or FIT team reviews 14 the use of deadly force? 15 A Yes, sir. 16 Q And then the Tactical Review Board reviews both 17 the CIRT report and the FIT report, no? 18 A No, sir. 19 Q Please explain. 20 A So the Tactical Review Board is what it says, it's 10:19:27 21 tactical. So within that is whether the tactics in 22 the -- that were used out by the officer fall within the 23 parameters of policy and procedure. 24 Q Okay. Now, isn't that the same thing the CIRT 25 team does?</p> <p style="text-align: right;">Page 18</p>	<p>1 the FIT statement? 2 THE WITNESS: No, sir. 3 BY MR. SAYRE: 4 Q So let me just say, I've got this Tactical Review 5 Board. I've got the CIRT, but I've never seen the Use of 6 Force Board report. 7 Now this document here, which is -- appears to be 8 a memorandum to Joseph Lombardo, the sheriff, this takes 10:21:27 9 into account things that were -- findings that were made 10 by CIRT? 11 A Yes, sir. 12 Q And findings that were made by the Tactical Review 13 Board? 14 A No. That is not correct. So the -- all of the 15 findings are presented by CIRT. What we do is we either 16 validate, modify or overturn those findings/conclusions 10:21:57 17 that are presented by CIRT. 18 So, for example, if there is a use of force and 19 handcuffing technique, okay, CIRT will come back and say 20 that that was within policy. And as they explain it, we 21 will either validate, yes, it is within policy; modify 22 it, maybe change it; or overturn it and say it is not 23 within policy, if what I'm saying makes sense. 10:22:26 24 Q Yes, it does. And the force investigation team, 25 or FIT, they look at the issues of deadly force. Do they</p> <p style="text-align: right;">Page 20</p>
<p>1 A That is -- 2 Q That is the same? 3 A So the CIRT renders the findings. 4 Q Okay. 5 A So basically they say -- they investigate and 6 determine whether or not the officer was within the 7 parameters of policy. And then they present those 10:19:56 8 findings, conclusions, to the Tactical Review Board, and 9 then we validate, modify or overturn those conclusions 10 that were rendered -- 11 Q Okay. I understand. 12 A -- by the Tactical Review Board. 13 Q So you basically -- when I say "you," I mean the 14 Tactical Review Board, reviews the findings of the CIRT 15 team concerning tactics, policies and procedures? 16 A Associated with the event. 17 Q And the FIT report, which considers issues of 18 deadly force, who, if anybody, reviews that? 10:20:30 19 A Use of Force Board. 20 Q Now, does the Use of Force Board produce a report 21 like the Tactical Review Board? 22 A Yes, sir. 23 MR. SAYRE: Craig, have I received a Use of Force 10:20:57 24 Board report? I don't think I've seen that. 25 MR. ANDERSON: I'll check. Is that the same as</p> <p style="text-align: right;">Page 19</p>	<p>1 make determinations about whether the use of force was 2 within or not within policy? 3 A So as those were presented in the Use of Force 4 Board, then the determination is whether or not they fell 5 within the parameters, and then you have four conclusions 6 for that as well. 7 Q Four conclusions, which are? 8 A Administrative approval, administrative 9 disapproval, tactics and training -- excuse me, tactics 10:23:00 10 and decision-making, and the third is policy failure. 11 Q So I understand approval or disapproval. Then the 12 next one was tactics -- 13 A And decision-making. 14 Q What does that mean? 15 A Meaning that the tactics and decision-making that 16 you made up to the use of force were flawed, which led to 17 you having to use deadly force. 18 Q So it's a form of disapproval but of the tactics? 19 A Yes, sir. 20 Q And then the last one, please? 10:23:29 21 A Policy failure. 22 Q Policy failure. And that was that there was a 23 failure of policy? 24 A Yes, sir. 25 Q Now that -- that report, did you -- have you</p> <p style="text-align: right;">Page 21</p>

<p>1 reviewed that report?</p> <p>2 A I draft that report.</p> <p>3 Q The FIT report?</p> <p>4 A No, not the FIT report, but the Use of Force.</p> <p>5 Q So essentially the Use of Force report is kind 10:24:00</p> <p>6 of -- is in the same position relative to the FIT report</p> <p>7 as the Tactical Review Board is to the CIRT report?</p> <p>8 A I don't understand. Say that --</p> <p>9 Q I'm sorry, I'm being inarticulate.</p> <p>10 As I understand it, the Tactical Review Board</p> <p>11 reviews the CIRT report and either accepts, rejects or 10:24:26</p> <p>12 modifies findings of the CIRT report?</p> <p>13 A Correct.</p> <p>14 Q The Use of Force, is it a board?</p> <p>15 A Yes, sir.</p> <p>16 Q It -- it reviews the FIT report?</p> <p>17 A So the same type of process that's related to the</p> <p>18 Tactical Review Board is the same type of process that's</p> <p>19 basically from the Use of Force Board, except for the</p> <p>20 civilians have the ability to basically, for lack of 10:24:59</p> <p>21 better words, out-vote the commission.</p> <p>22 So as we go through what occurred on the use of</p> <p>23 force from the deadly force perspective, they actually</p> <p>24 walk through what exactly occurred. They have the</p> <p>25 ability to ask the officer questions associated with the</p> <p style="text-align: right;">Page 22</p>	<p>1 A The content, there are parts of the report that 10:26:30</p> <p>2 are drafted as kind of a boilerplate of the incident and</p> <p>3 the occurrence of what happened out there, and then I add</p> <p>4 comments.</p> <p>5 Q In the Use of Force report?</p> <p>6 A Yes, sir. That goes to the sheriff.</p> <p>7 MR. SAYRE: I guess, Craig, what I need is I need</p> <p>8 the Use of Force report.</p> <p>9 MR. ANDERSON: I'll look at it.</p> <p>10 MR. SAYRE: And we'll see if it's available, and</p> <p>11 then I may need to see the exceptional assistant sheriff 10:26:56</p> <p>12 again to review that perhaps.</p> <p>13 MR. ANDERSON: I'll look at it.</p> <p>14 MR. SAYRE: Okay. Right.</p> <p>15 BY MR. SAYRE:</p> <p>16 Q Okay. Now, is it correct that once the sheriff</p> <p>17 receives the Tactical Review Board report, which is the</p> <p>18 document we have here before us, he can accept, reject or</p> <p>19 modify it as he sees fit?</p> <p>20 A Yes, sir.</p> <p>21 Q Does he do that in a written form? 10:27:28</p> <p>22 A That I'm not aware of.</p> <p>23 Q How would you know that he had accepted, rejected</p> <p>24 or modified the Tactical Review Board?</p> <p>25 A I would have known because he would have said</p> <p style="text-align: right;">Page 24</p>
<p>1 use of force, and then we deliberate and come back with</p> <p>2 one of those four findings.</p> <p>3 Q Okay. So it is in a similar position --</p> <p>4 A Yes, sir. My fault. 10:25:29</p> <p>5 Q That's all right.</p> <p>6 It is in a similar position as the Tactical Review</p> <p>7 Board is to CIRT, the Use of Force Board is to FIT?</p> <p>8 A Yes, sir.</p> <p>9 Q I understood it before, but I was not very</p> <p>10 articulate in expressing it.</p> <p>11 Is the Use of Force report presented to the</p> <p>12 sheriff also?</p> <p>13 A Yes, sir.</p> <p>14 Q And you authored the Use of Force report</p> <p>15 concerning the Tashi Farmer case? 10:25:59</p> <p>16 A Yes, sir.</p> <p>17 Q So ultimately the sheriff receives a memorandum</p> <p>18 from the Tactical Review Board, which we have here before</p> <p>19 us, correct?</p> <p>20 A Uh-huh, yes.</p> <p>21 Q And he receives a memorandum also from the Use of</p> <p>22 Force Board?</p> <p>23 A Yes, sir.</p> <p>24 Q Which you also authored but we don't have before</p> <p>25 us?</p> <p style="text-align: right;">Page 23</p>	<p>1 something to me.</p> <p>2 Q He would say it to you. 10:27:53</p> <p>3 Do you recall whether or not he said anything to</p> <p>4 you about accepting, rejecting or modifying the Tactical</p> <p>5 Review Board memorandum?</p> <p>6 A No, sir.</p> <p>7 Q So he has not said one way or the other?</p> <p>8 A No, sir.</p> <p>9 Q Did you take that to mean that he had accepted it?</p> <p>10 A Yes, sir, because his signature is on it.</p> <p>11 Q Now, it's not on this document.</p> <p>12 A It is.</p> <p>13 Q It's on this document? Okay.</p> <p>14 A Front page.</p> <p>15 Q I see. What's up here, okay, right at the top, it 10:28:26</p> <p>16 says, "To: Joseph Lombardo, Sheriff," and then</p> <p>17 there's -- it looks like a doctor's signature because I</p> <p>18 can't read it, but that is actually Sheriff Lombardo's</p> <p>19 signature?</p> <p>20 A Yes, sir.</p> <p>21 Q And it has a date 9/18/17, which would be</p> <p>22 September 18, 2017, and this indicates his acceptance</p> <p>23 of --</p> <p>24 A The document.</p> <p>25 Q -- the document. Got it. All right.</p> <p style="text-align: right;">Page 25</p>

<p>1 Now, does he similarly have the right to accept, 10:28:57</p> <p>2 reject or modify the Use of Force memorandum?</p> <p>3 A Yes, sir.</p> <p>4 Q And does he do it in a similar way, meaning if he</p> <p>5 accepts it, he signs his name to it?</p> <p>6 A I would assume because his signature usually goes</p> <p>7 at the top.</p> <p>8 Q Do you remember if he accepted, rejected or</p> <p>9 modified the Use of Force report?</p> <p>10 A He accepted.</p> <p>11 Q Who would maintain the Use of Force report 10:29:37</p> <p>12 concerning this incident? Do you understand what I mean?</p> <p>13 In other words --</p> <p>14 A Yeah, I understand what you're saying. That would</p> <p>15 be -- you know what, I'm not going to guess, so no, I</p> <p>16 don't know exactly.</p> <p>17 Q Do you maintain a copy of the Use of Force</p> <p>18 memorandum that you prepared and gave to Sheriff 10:29:59</p> <p>19 Lombardo?</p> <p>20 A No.</p> <p>21 Q Is there a filing system in your department that</p> <p>22 somebody maintains that report?</p> <p>23 A Yes.</p> <p>24 Q And who is the person within your department, if</p> <p>25 you know, that maintains that -- those reports?</p> <p style="text-align: right;">Page 26</p>	<p>1 housed in CIRT and FIT.</p> <p>2 Q Okay. You mean specifically in files that pertain</p> <p>3 to CIRT and FIT?</p> <p>4 A Yes, sir.</p> <p>5 Q Do you know if the sheriff maintains copies of</p> <p>6 these memoranda that he signs off on?</p> <p>7 A No. I don't know.</p> <p>8 Q You don't know?</p> <p>9 A I don't know. 10:31:59</p> <p>10 Q So it would be Sheriff Zimmerman that would be in</p> <p>11 charge of these memoranda?</p> <p>12 A CIRT and FIT.</p> <p>13 Q CIRT and FIT.</p> <p>14 And what's Sheriff Zimmerman's first name?</p> <p>15 A Brett.</p> <p>16 Q You mentioned that you're no longer in charge of</p> <p>17 the Tactical Review Board. Is Sheriff Zimmerman still in 10:32:27</p> <p>18 charge of CIRT and FIT as of today?</p> <p>19 A Yes, sir.</p> <p>20 Q And was he in charge of CIRT and FIT at the time</p> <p>21 of this memorandum?</p> <p>22 A No.</p> <p>23 Q Who was in charge then?</p> <p>24 A Assistant Sheriff Tom Roberts. He's retired.</p> <p>25 Q But Assistant Sheriff Zimmerman, I guess, has</p> <p style="text-align: right;">Page 28</p>
<p>1 A I do not know.</p> <p>2 Q Is there an office manager or administrative 10:30:26</p> <p>3 person in your department that would do filing?</p> <p>4 A Yes.</p> <p>5 Q And who would that be?</p> <p>6 A For our section -- can you rephrase the question,</p> <p>7 me or the sheriff's office, what -- I don't --</p> <p>8 Q Fair enough. Your department, I'm thinking of you</p> <p>9 as the assistant sheriff.</p> <p>10 A So this would work out of the other side of the</p> <p>11 house, which would be the CIRT/FIT side of the house,</p> <p>12 which falls under Assistant Sheriff Brett Zimmerman. 10:31:00</p> <p>13 CIRT and FIT do not fall under my purview.</p> <p>14 Q They did not at the time?</p> <p>15 A No, sir.</p> <p>16 Q And they still don't, I guess?</p> <p>17 A No, sir.</p> <p>18 Q So CIRT and FIT are Zimmerman.</p> <p>19 When you say "the other side of the house," it's</p> <p>20 just a way of saying it belongs to Assistant Sheriff</p> <p>21 Zimmerman's area?</p> <p>22 A Yes, sir.</p> <p>23 Q And do you know who his administrative person is 10:31:29</p> <p>24 that --</p> <p>25 A No, sir, because those documents would probably be</p> <p style="text-align: right;">Page 27</p>	<p>1 become an assistant sheriff since that time? 10:32:59</p> <p>2 A Yes, sir.</p> <p>3 Q So now he has basically come to be responsible for</p> <p>4 CIRT and FIT in his new role?</p> <p>5 A Yes, sir.</p> <p>6 Q Do you remember, since you prepared the report,</p> <p>7 what the report said? And this may be an unfair question</p> <p>8 because it may be too much to remember at one time, but</p> <p>9 do you remember any aspects of the report, the Use of 10:33:27</p> <p>10 Force report?</p> <p>11 A The Use of Force report?</p> <p>12 Q Yes, sir.</p> <p>13 A No, sir, I did not review the Use of Force</p> <p>14 reports.</p> <p>15 Q I'm sorry, I thought you authored the Use of Force</p> <p>16 reports.</p> <p>17 A No, you're saying from a year-and-a-half ago. So</p> <p>18 no, I don't remember it, meaning that I haven't reviewed</p> <p>19 it in a year-and-a-half.</p> <p>20 Q Oh, yeah. No, I understand, and I acknowledge</p> <p>21 that it might not be a fair question.</p> <p>22 But you did prepare the Use of Force report</p> <p>23 specific to the Tashi Farmer case?</p> <p>24 A Yes, sir.</p> <p>25 Q You just -- it's been awhile? 10:34:00</p> <p style="text-align: right;">Page 29</p>

<p>1 A Okay.</p> <p>2 Q Have you reviewed the Force Investigation Team</p> <p>3 report?</p> <p>4 A I've seen this report.</p> <p>5 Q Okay. Now, that's a careful answer to a specific</p> <p>6 question.</p> <p>7 The question was, have you read this report?</p> <p>8 A Oh, geez, this has been about -- I've read it, but</p> <p>9 it's been maybe a year. 10:44:59</p> <p>10 Q That's fine. Okay. I'm not asking you to have</p> <p>11 total recall of everything you read. I just wanted to</p> <p>12 know whether you had at some point.</p> <p>13 A Yes, I read it.</p> <p>14 MR. McNUTT: Are we marking this 2?</p> <p>15 MR. SAYRE: 2 for identification.</p> <p>16 (Deposition Exhibit 2 marked.)</p> <p>17 BY MR. SAYRE:</p> <p>18 Q In this report, you basically have the work</p> <p>19 product of Detective Trevor Alsup, correct? If you look</p> <p>20 at the first page.</p> <p>21 A Yeah, I see it.</p> <p>22 Q Is that correct?</p> <p>23 And did Trevor Alsup have any input into the 10:45:30</p> <p>24 proceedings of the Tactical Review Board?</p> <p>25 A No.</p> <p style="text-align: right;">Page 38</p>	<p>1 prosecution on the back end.</p> <p>2 So we're looking at whether or not it was within 10:46:59</p> <p>3 policy, procedures, that when the initial use of force</p> <p>4 was used in the Use of Force Board.</p> <p>5 Q Okay. Take a look at page 3, LVMPD 3771. Second 10:47:27</p> <p>6 paragraph. It says, "Sergeant Crumrine was the only</p> <p>7 supervisor on scene for approximately 12 minutes. During</p> <p>8 that time, Sergeant Crumrine failed to start any ICS</p> <p>9 duties or delegate any tasks to the numerous officers on</p> <p>10 scene." 10:47:59</p> <p>11 Who wrote that, if you know?</p> <p>12 A This was authored by CIRT, the initial --</p> <p>13 basically the -- an overview synopsis of what occurred.</p> <p>14 Q Okay. Do you know who authored the CIRT report?</p> <p>15 A No, sir.</p> <p>16 Q Is this something that was accepted by you in</p> <p>17 preparing your memorandum to Chief Lombardo?</p> <p>18 A Yes, sir.</p> <p>19 Q Okay. Continuing to read, "Sergeant Crumrine 10:48:33</p> <p>20 realized the severity of the incident 7 minutes after</p> <p>21 Farmer was taken into custody and officers had performed</p> <p>22 CPR. During that window of time, Officer Lopera told</p> <p>23 several officers on scene he had 'choked him (Farmer)</p> <p>24 out' (four times) and placed him (Farmer) in a 'rear</p> <p>25 naked' (one time), all of which was captured on his body 10:48:56</p> <p style="text-align: right;">Page 40</p>
<p>1 Q Did Trevor Alsup have any input into any of the</p> <p>2 proceedings of the force investigation report?</p> <p>3 A That I'm not aware of. In all actuality, I don't</p> <p>4 know.</p> <p>5 Q Okay. But I would assume -- and please correct me</p> <p>6 if I'm wrong -- I would assume that his work product, 10:46:00</p> <p>7 meaning the Force Investigation Team report, would have</p> <p>8 been utilized by the Tactical Review Board?</p> <p>9 A No.</p> <p>10 Q No? Okay.</p> <p>11 Would the Force Investigation Team report have</p> <p>12 been utilized by the Use of Force review?</p> <p>13 A Board?</p> <p>14 Q Yes.</p> <p>15 A No.</p> <p>16 Q Okay. Why not?</p> <p>17 A Because the Use of Force Board reviews the -- just 10:46:27</p> <p>18 basically the conclusions or the -- basically the what</p> <p>19 led up to the use of force and whether or not it fell</p> <p>20 within the parameters of policy.</p> <p>21 Q Okay.</p> <p>22 A So that's what we look at initially.</p> <p>23 We don't go through these entire reports</p> <p>24 because -- I'm not sure, but I think these are associated</p> <p>25 with potentially whether or not there's going to be</p> <p style="text-align: right;">Page 39</p>	<p>1 worn camera."</p> <p>2 Did that information come from CIRT? I'm talking</p> <p>3 about the statements made by Officer Lopera.</p> <p>4 A That I do not know.</p> <p>5 Q Is that information that you accepted as being</p> <p>6 true?</p> <p>7 A Yes.</p> <p>8 Q Now, down below the blanked out -- by the way, do</p> <p>9 you know why that area is blanked out that proceeds</p> <p>10 thereafter?</p> <p>11 A I'm assuming because it may be related to Lopera. 10:49:30</p> <p>12 Q But you don't really recall?</p> <p>13 A No.</p> <p>14 Q It says, "camera showed" -- if you look below the</p> <p>15 block down there, "camera showed Officer Lopera</p> <p>16 immediately placed his right hand on top of Farmer's</p> <p>17 head, similar to the hand placement of a rear naked</p> <p>18 choke. There appeared to be no attempt to obtain the</p> <p>19 proper grip for the LVNR, as taught by LVMPD." 10:50:00</p> <p>20 Whose conclusion is that, those two sentences?</p> <p>21 A So I would assume that that's based on the review</p> <p>22 of the entirety of the incident being body worn camera,</p> <p>23 witnesses, other videos associated with Venetian that</p> <p>24 that conclusion was made.</p> <p>25 Q I agree, but that wasn't my question.</p> <p style="text-align: right;">Page 41</p>

<p>1 Whose conclusion was it?</p> <p>2 A I'm assuming that it would be CIRT. 10:50:29</p> <p>3 Q So CIRT said that Officer Lopera immediately</p> <p>4 placed his right hand on top of Farmer's head similar to</p> <p>5 the hand placement of a rear naked choke?</p> <p>6 A If it was CIRT, then they must have gained this</p> <p>7 through the investigation.</p> <p>8 Q Do you know who wrote the CIRT report?</p> <p>9 A No, sir. I don't recall. 10:50:58</p> <p>10 Q Do you know who the chair of the CIRT team was at</p> <p>11 the time?</p> <p>12 A So the captain was Kelly McMahon, and the</p> <p>13 lieutenant was Dan Bledsoe.</p> <p>14 Q All right. And then it said, "There appeared to</p> <p>15 be no attempt to obtain the proper grip for the LVNR, as 10:51:27</p> <p>16 taught by LVMPD."</p> <p>17 Is that a conclusion from CIRT?</p> <p>18 A I do not know, but I would assume that it said</p> <p>19 "CIRT's review showed," so --</p> <p>20 Q It doesn't say.</p> <p>21 A At the top right there it says, "CIRT's review,"</p> <p>22 so I'm assuming CIRT would be the one that's reviewing --</p> <p>23 Q I'm sorry, where at the top?</p> <p>24 A Right after that statement it says, "CIRT's</p> <p>25 review."</p> <p style="text-align: right;">Page 42</p>	<p>1 seconds had elapsed from the time Officer Lopera</p> <p>2 initiated the neck restraint and the time Farmer was</p> <p>3 released from the neck restraint. Farmer's behavior of</p> <p>4 resistance level never appeared to be aggressive as 10:53:58</p> <p>5 described by Officer Lopera."</p> <p>6 Is it your belief that this information came from</p> <p>7 CIRT?</p> <p>8 A Yes.</p> <p>9 Q And you accepted it to be true?</p> <p>10 A Yes.</p> <p>11 Q And the sheriff accepted it to be true by</p> <p>12 accepting the report?</p> <p>13 A I would assume.</p> <p>14 Q Well, it would have to be?</p> <p>15 A Well, yes, because he signed it.</p> <p>16 MR. SAYRE: Can we take a short break, please?</p> <p>17 MR. ANDERSON: Yes.</p> <p>18 VIDEOGRAPHER: We are now going off the record.</p> <p>19 The time is approximately 10:54a.m. 10:54:28</p> <p>20 (Recess.) 10:59:02</p> <p>21 VIDEOGRAPHER: We are back on the record.</p> <p>22 The time is approximately 10:59 a.m.</p> <p>23 BY MR. SAYRE:</p> <p>24 Q Okay, let's go over to page 4, please. All right.</p> <p>25 It would be under "Summary of Findings," it says,</p> <p style="text-align: right;">Page 44</p>
<p>1 Q Oh, after the statement. 10:51:59</p> <p>2 A Yes. So I'm assuming that CIRT is the one that is</p> <p>3 making these statements.</p> <p>4 Q Did you accept these two statements: One, that</p> <p>5 Lopera immediately placed his right hand on top of</p> <p>6 Farmer's head similar to the hand placement of a rear</p> <p>7 naked choke; and two, there appeared to be no attempt to</p> <p>8 obtain the proper grip for the LVNR, as taught by the</p> <p>9 LVMPD? Did you accept those both to be true? 10:52:28</p> <p>10 A Yes.</p> <p>11 Q And, of course, is it fair to say that the sheriff</p> <p>12 accepted these statements to be true because he accepted</p> <p>13 the report?</p> <p>14 A Fair to say.</p> <p>15 Q All right. And then the next thing is, as you</p> <p>16 say, "CIRT's review showed that Officer Lopera had tased 10:53:00</p> <p>17 Farmer 7 times for a total duration of 39 seconds. He</p> <p>18 struck Farmer in the face 13 times. Review of the camera</p> <p>19 showed Farmer had his hands up in a protective manner</p> <p>20 around his face, while Officer Lopera maintained a</p> <p>21 dominant position over Farmer. Officer Lopera instructed</p> <p>22 Farmer 'to get on his stomach' numerous times without 10:53:30</p> <p>23 realizing Farmer was on his stomach. Officer Lopera was</p> <p>24 also told several times to let go, however the Venetian</p> <p>25 Surveillance Video showed more than one minute and 12</p> <p style="text-align: right;">Page 43</p>	<p>1 "CIRT presented," and I assume that's meant to be 10:59:27</p> <p>2 "several conclusions" as opposed to "severe</p> <p>3 conclusions" --</p> <p>4 A Yes, sir.</p> <p>5 Q -- "reference Officer Lopera; six were validated</p> <p>6 and one was modified, additional conclusion was added.</p> <p>7 Due to the circumstances of this Tactical Review Board, a</p> <p>8 summary conclusion was added under Threat Assessment."</p> <p>9 Do you understand that to mean that the additional</p> <p>10 conclusion was actually placed under threat assessment?</p> <p>11 A Yes, sir. 10:59:59</p> <p>12 Q It says, "When Officer Lopera made the decision to</p> <p>13 conduct a Person Stop on Farmer, per policy he was</p> <p>14 required to communicate his intentions to make contact</p> <p>15 via the radio. Officer Lopera failed to comply with</p> <p>16 policy.</p> <p>17 "CIRT concluded Officer Lopera's failure to</p> <p>18 communicate the person stop was not within the</p> <p>19 standardized LVMPD tactics, training and policy." 11:00:27</p> <p>20 And what is your understanding of that finding?</p> <p>21 MR. ANDERSON: Objection.</p> <p>22 MR. McNUTT: Objection, form.</p> <p>23 THE WITNESS: So my understanding is that he</p> <p>24 didn't communicate the person stop to dispatch.</p> <p>25 BY MR. SAYRE:</p> <p style="text-align: right;">Page 45</p>

<p>1 MR. McNUTT: Objection, form.</p> <p>2 THE WITNESS: It doesn't say that. It just says</p> <p>3 cascade of events.</p> <p>4 BY MR. SAYRE:</p> <p>5 Q No, but I'm trying to understand what you 11:05:29</p> <p>6 understood about -- I mean, you accepted the CIRT</p> <p>7 conclusion, right?</p> <p>8 A Correct.</p> <p>9 Q Did you know what CIRT was saying when they said</p> <p>10 that it ultimately led to a cascade of events?</p> <p>11 A Well, at the time of this board, I'm sure we had</p> <p>12 clarification, but I don't recall what that clarification</p> <p>13 was. It's been a significant amount of time.</p> <p>14 Q Sorry. Did -- well, did the cascade of events</p> <p>15 include the death of Mr. Farmer?</p> <p>16 MR. McNUTT: Objection, form. 11:05:59</p> <p>17 THE WITNESS: I don't recall that that was said.</p> <p>18 And as a matter of fact, I don't think that that was</p> <p>19 said.</p> <p>20 BY MR. SAYRE:</p> <p>21 Q Did the cascade of events include the application</p> <p>22 of a neck restraint?</p> <p>23 MR. McNUTT: Objection, form.</p> <p>24 THE WITNESS: I don't recall. It's been a</p> <p>25 year-and-a-half, so --</p> <p style="text-align: right;">Page 50</p>	<p>1 whether or not the individual officer's actions were</p> <p>2 within policy, procedures, training and tactics. The 11:07:26</p> <p>3 courts determine that stuff.</p> <p>4 MR. SAYRE: Actually, juries do.</p> <p>5 MR. McNUTT: I'm sorry, what was the last part of</p> <p>6 the answer?</p> <p>7 MR. SAYRE: Courts determine that stuff.</p> <p>8 Actually, juries do.</p> <p>9 MR. ANDERSON: Objection, misstates procedure.</p> <p>10 Courts can't determine that.</p> <p>11 MR. SAYRE: Well, Mr. Anderson will determine</p> <p>12 that.</p> <p>13 BY MR. SAYRE:</p> <p>14 Q All right. Was it outside of policy to strike</p> <p>15 Mr. Farmer on the head 10 to 12 times?</p> <p>16 MR. McNUTT: Objection, form.</p> <p>17 THE WITNESS: Based on the investigation, it was 11:07:59</p> <p>18 determined that it was outside of policy.</p> <p>19 BY MR. SAYRE:</p> <p>20 Q Was it outside of policy to tase Mr. Farmer seven</p> <p>21 times?</p> <p>22 MR. McNUTT: Objection, form.</p> <p>23 THE WITNESS: The initial tase we determined was</p> <p>24 within policy. All subsequent tases were outside</p> <p>25 policy.</p> <p style="text-align: right;">Page 52</p>
<p>1 BY MR. SAYRE:</p> <p>2 Q Well, I mean, I understand. But -- this is a</p> <p>3 rather important document, don't you agree?</p> <p>4 A Yes.</p> <p>5 MR. McNUTT: Objection, form.</p> <p>6 BY MR. SAYRE:</p> <p>7 Q And the CIRT conclusion here, you accepted that to</p> <p>8 be true, correct?</p> <p>9 A Yes.</p> <p>10 Q You agreed that -- you agreed with their 11:06:29</p> <p>11 conclusion that the inability to formulate a plan</p> <p>12 ultimately led to a cascade of events that were not</p> <p>13 within standardized LVMPD tactics?</p> <p>14 A True.</p> <p>15 Q Was it within LVMPD tactics to apply a neck</p> <p>16 restraint?</p> <p>17 A The -- what exactly do you mean by the question?</p> <p>18 Q Pretty straightforward. Was it within LVMPD 11:06:59</p> <p>19 tactics to apply a neck restraint on Mr. Farmer?</p> <p>20 A No, it was outside of policy.</p> <p>21 Q And did it constitute excessive force?</p> <p>22 MR. McNUTT: Objection, form.</p> <p>23 MR. ANDERSON: Objection, form.</p> <p>24 THE WITNESS: In the Tactical Review Board, we</p> <p>25 don't determine excessive force. What we determine is</p> <p style="text-align: right;">Page 51</p>	<p>1 BY MR. SAYRE:</p> <p>2 Q And they were outside of policy because no attempt</p> <p>3 was made to make an assessment of the use of force?</p> <p>4 A Correct. 11:08:23</p> <p>5 Q Mr. or -- we'll call him Mr. Lopera was fired from</p> <p>6 the Metropolitan Police Department, correct?</p> <p>7 MR. ANDERSON: Objection, form.</p> <p>8 THE WITNESS: He was recommended for termination,</p> <p>9 and I remember -- if I recall, I think he retired prior</p> <p>10 to the termination or somewhere along those lines. 11:08:54</p> <p>11 BY MR. SAYRE:</p> <p>12 Q Recommended for termination by whom?</p> <p>13 A That recommendation would come from me.</p> <p>14 Q And why did you recommend Officer Lopera for</p> <p>15 termination?</p> <p>16 A That would have come from the use of force side,</p> <p>17 and I can't remember the details of the -- of why, but he</p> <p>18 didn't say anything during the Use of Force Board so --</p> <p>19 Q Was he terminated or was he recommended for 11:09:29</p> <p>20 termination because of insubordination or because of his</p> <p>21 behavior in this incident or both?</p> <p>22 A I don't recall.</p> <p>23 Q We would have to look at the Use of Force report</p> <p>24 to see what they said; is that correct?</p> <p>25 A Yes. 11:09:51</p> <p style="text-align: right;">Page 53</p>

<p>1 Q You said that you were the person that recommended 2 his termination because that was your role within the 3 department? 4 A So there's a role where I discuss that with his 5 bureau commanders. I also discuss it with labor 6 relations. And then I make a determination based on 7 those conversations what direction. 8 Q All right. When you discussed it with his bureau 9 commanders, who would that have been? 11:10:29 10 A That would have been Captain Pelletier, and it 11 might have been Captain McDaris, who was his -- he had 12 changed stations, so I believe it was Captain McDaris. 13 Q Could you please spell that name? 14 A M-c-D-a-r-i-s. No, it's Burke now, B-u-r-k-e. 11:10:55 15 Q It's Burke now? 16 A Yeah. 17 Q Is that a married name? 18 A Yes. 19 Q So Captain Burke? 20 A Uh-huh. 21 Q Is that a "yes"? 22 A Yes, sir. 23 Q All right. So you discussed it with them, and you 24 discussed it with labor relations. Is that something 25 like a human resources person?</p> <p style="text-align: right;">Page 54</p>	<p>1 A That I'm not aware of. 2 Q You have not been sued? 3 A No, sir. 4 MR. McNUTT: Are you representing him, Fred? 11:12:57 5 MR. SAYRE: I'd love -- this is a very fine man. 6 I'd love to represent him. As opposed to I would not 7 like to represent you. All right. That's another 8 matter. 9 BY MR. SAYRE: 10 Q Now, looking at page 5, there are a number of 11 tactical assessments made in which CIRT found Officer 11:13:25 12 Lopera made -- failed to follow policy. Looks like 13 there's four of them, correct? 14 A Yes, sir. 15 Q And you accepted all of these conclusions from 16 CIRT? 17 A Yes, sir. 18 Q And that's why you included them in your report to 19 Sheriff Lombardo, correct? 20 A Yes, sir. 21 Q All right. It says, "CIRT concluded Officer 11:13:59 22 Lopera's tactics during the foot pursuit were not within 23 standardized LVMPD tactics, training and policy," and 24 that you found to be an appropriate determination by 25 CIRT?</p> <p style="text-align: right;">Page 56</p>
<p>1 A So labor relations is the component of the agency 2 that handles discipline for the organization. 11:11:27 3 Q Is there a person in labor relations that you 4 discussed it with specifically? 5 A I can't remember who I spoke with. 6 Q Did you discuss it with a representative of 7 Officer Lopera? 8 A No. 9 Q Now, when was Officer Lopera -- you said you 10 recommended termination. That sounds like it's someone 11:11:59 11 else's decision to actually terminate. 12 A The sheriff. 13 Q The sheriff. So the sheriff did accept your 14 recommendation and terminated him? 15 A I don't know whether or not he was terminated or 16 he retired, but the sheriff accepted my recommendation. 17 Q And when would that have been, do you know? 18 A No, sir. 19 Q Would it have been sometime after this report, the 20 Exhibit 1? 11:12:29 21 A Both of those reports, the Use of Force Board 22 report, along with that report, both go to the sheriff. 23 Q All right. Now, is it correct that Officer Lopera 24 has now sued the department because of his -- for some 25 reason?</p> <p style="text-align: right;">Page 55</p>	<p>1 A Yes. 2 Q Next page says, "CIRT concluded the use of strikes 11:14:33 3 by Officer Lopera was not within standardized LVMPD 4 tactics, training and policy." 5 You agreed with that assessment? 6 A Yes, sir. 7 Q And that's why it's included in the report to 8 Sheriff Lombardo? 9 A Yes, sir. 10 Q And he agreed with that, too, because he signed 11 off on the report? 11:14:59 12 A Correct. 13 Q "The autopsy of Farmer showed evidence of 14 hemorrhages to his neck. If the LVNR is applied 15 correctly, this type of injury should not occur." 16 Who stated that? 17 A That would be CIRT stated that. 18 Q Now, you've been trained in the use of the LVNR, 19 correct, once? 11:15:28 20 A Yes. 21 Q It's been awhile? 22 A It's been awhile. 23 Q And it's been awhile since you were in a position 24 where you might be called upon to use it? 25 A Correct.</p> <p style="text-align: right;">Page 57</p>

<p>1 Q But I'm sure you have reviewed the behavior of 2 officers under your supervision and control who have used 3 the LVNR? 4 A Yes, sir. 5 Q All right. Do you believe this to be a true 6 statement, that the evidence of hemorrhages to the neck 7 if the LVNR is applied correctly, that type of injury 11:15:57 8 should not occur? 9 MR. McNUTT: Objection, form, calls for a medical 10 opinion. 11 MR. ANDERSON: Join. 12 THE WITNESS: I don't have the ability to answer 13 that question. 14 BY MR. SAYRE: 15 Q That's fine. 16 It says, "Officer Lopera's body worn camera 17 depicts Sergeant Crumrine arriving and telling Officer 18 Lopera to 'let go' of the neck restraint he had on 19 Farmer. Officer Lopera responded by asking Sergeant 11:16:26 20 Crumrine three separate times, "Is he out?" 21 This is information that came from CIRT? 22 A During the investigation. 23 Q In addition on his body worn camera, Officer 24 Lopera can be heard five separate times referencing the 25 application of the LVNR in his interview as a rear naked</p> <p style="text-align: right;">Page 58</p>	<p>1 use of force." 2 Is that the conclusion that was added on by the -- 3 by your board? 4 A Yes. 5 Q And is gross inappropriate use of force the 6 equivalent of excessive force? 7 MR. ANDERSON: Objection, form. 8 THE WITNESS: Gross inappropriate use of force 11:18:28 9 means that the force used was outside of policy, 10 procedure, training and tactics. 11 BY MR. SAYRE: 12 Q Why the word "gross"? 13 A Because of the combination of the taser, the 14 strikes and the LVNR. 15 Q Do you have a belief, you personally, as Assistant 11:18:54 16 Sheriff Tim Kelly, that the combination of taser, strikes 17 and LVNR constituted a Fourth Amendment violation of 18 Mr. Farmer's rights -- 19 MR. ANDERSON: Objection, form. 20 BY MR. SAYRE: 21 Q -- as used by Officer Lopera? 22 MR. McNUTT: Objection, form. 23 MR. ANDERSON: Objection, form. 24 THE WITNESS: We don't make that determination at 25 the Tactical Review Board. What we make is a</p> <p style="text-align: right;">Page 60</p>
<p>1 and/or choking him out. This is information that came 2 from the investigation also? 3 A Yes, sir. 4 Q Did the Tactical Review Board come to a conclusion 11:17:02 5 that Officer Lopera had utilized a rear naked choke and 6 not a lateral vascular neck restraint? 7 A No, we did not. 8 Q Did CIRT come to a conclusion that Officer Lopera 9 had used a rear naked choke rather than a lateral 10 vascular neck restraint? 11 A Not that I'm aware of. 12 Q It says CIRT concluded Officer Lopera's use of the 11:17:27 13 neck restraint, whatever it was, was not within 14 standardized LVMPD tactics, training and policy, and you 15 agree with that? 16 A Yes. 17 Q Why? 18 A Well, when you look at the video, it isn't an 19 LVNR, but we don't know pretty much what it is. But what 20 I know is what he used was not within the policy that we 21 teach. 22 Q Okay. Then it says, "The Tactical Review Board 23 concluded that as a result of the above conclusions in 11:18:00 24 relation to Threat Assessment, Officer Lopera's actions 25 during this incident amounted to a gross inappropriate</p> <p style="text-align: right;">Page 59</p>	<p>1 determination of whether or not the officer's use of 2 tactics, the officer's use of force out there in the 11:19:28 3 field, fell within the confines of policy. We don't step 4 into that arena. 5 BY MR. SAYRE: 6 Q Who decided to use the word "gross," "gross 7 inappropriate use of force"? 8 A So gross inappropriate use of force was determined 9 after consultation with labor relations. 10 Q I'm sorry, what does that mean? 11 A The verbiage was basically it was along the lines 11:19:57 12 of, hey, because of the succession of use of force, it 13 was determined to be gross and inappropriate use of 14 force. And if I remember correctly, that was in 15 consultation with labor relations. 16 Q No, I understand you answered that question, but 17 why did labor relations consult with you? 18 A I -- because that's what we do. I mean as it 19 pertains to the discipline and all the things associated 11:20:28 20 with the report. 21 Q Okay. The use of force could have been determined 22 to have been inappropriate, just inappropriate, but here 23 the word that was added was "gross." And that must have 24 had some meaning to use the word "gross." 25 A Actually, I can't -- I mean, I can just go off of</p> <p style="text-align: right;">Page 61</p>

16 (Pages 58 - 61)

<p>1 what my assumption is. But in all actuality, I can't 11:20:57</p> <p>2 remember exactly what the conversation was about, but we</p> <p>3 did have a conversation about that.</p> <p>4 Q Who came up with the word "gross" to describe the</p> <p>5 inappropriate use of force by Officer Lopera?</p> <p>6 A I'm pretty sure it was labor relations.</p> <p>7 Q And any particular person in labor relations?</p> <p>8 A I can't recall.</p> <p>9 Q Did they tell you that gross would indicate that</p> <p>10 the level of force that was being used was beyond what 11:21:25</p> <p>11 you would anticipate or expect to be used by a police</p> <p>12 officer?</p> <p>13 MR. ANDERSON: Objection, form.</p> <p>14 THE WITNESS: Not -- I can't recall whether or not</p> <p>15 those specific words were used because it's been awhile.</p> <p>16 BY MR. SAYRE:</p> <p>17 Q But did the person indicate the use of gross was</p> <p>18 going to be used to show it wasn't just simply an</p> <p>19 inappropriate use of force but was more egregious than</p> <p>20 that? 11:21:59</p> <p>21 MR. McNUTT: Objection, form.</p> <p>22 THE WITNESS: I don't recall.</p> <p>23 BY MR. SAYRE:</p> <p>24 Q All right. The next paragraph on that page, "CIRT</p> <p>25 determined based on video evidence and witness statements</p> <p style="text-align: right;">Page 62</p>	<p>1 changes in policy, LVNR was in low level. 11:23:57</p> <p>2 BY MR. SAYRE:</p> <p>3 Q So it could have been applied even without</p> <p>4 aggressive resistance?</p> <p>5 A In low level, yes.</p> <p>6 Q But that would be one, not two or three?</p> <p>7 A I can't remember exactly what the policy said back</p> <p>8 then.</p> <p>9 Q We're going to just hop over the gross</p> <p>10 insubordination. Nothing there for me.</p> <p>11 Looking at page 8, which is LVMPD 3776, "A board</p> <p>12 member said, each force application that LVMPD department</p> <p>13 member uses should be assessed between each use of force.</p> <p>14 "A board member said, there was over 20</p> <p>15 applications of force, did anyone else see any</p> <p>16 assessment?</p> <p>17 "SME Bland stated there were opportunities to</p> <p>18 assess but no assessment made."</p> <p>19 Okay. Now, SME, I don't know what those initials</p> <p>20 stand for.</p> <p>21 A Subject matter expert.</p> <p>22 Q So that's Michael Bland, right?</p> <p>23 A Yes, sir.</p> <p>24 Q All right. I've deposed him and he's a use of</p> <p>25 force expert, so he said there were no assessments</p> <p style="text-align: right;">Page 64</p>
<p>1 that at the time Officer Lopera struck Farmer multiple</p> <p>2 times in his head, Farmer was only in a level of active 11:22:27</p> <p>3 resistance. Officer Lopera's actions are not supported</p> <p>4 by LVMPD training and policy."</p> <p>5 Does that mean he was not aggressively resisting?</p> <p>6 A So active resistance is basically the suspect or</p> <p>7 subject is either using, through verbal or potentially 11:22:58</p> <p>8 physical, to resist taking the officer into custody, but</p> <p>9 there's no intent -- and I'm going off of memory here --</p> <p>10 there's no intent to harm the officer.</p> <p>11 Q Right, there's no punches or kicks?</p> <p>12 A There's no attempt to harm the officer in active</p> <p>13 resistance. So if Lopera felt that the subject was in</p> <p>14 aggressive resistance, then this determination was based</p> <p>15 on what they observed through the video. 11:23:28</p> <p>16 Q Right. So it indicates that if Lopera thought he</p> <p>17 was being aggressively resistant, he was incorrect based</p> <p>18 upon the video?</p> <p>19 A Yes, sir.</p> <p>20 Q And aggressive resistance would have been what</p> <p>21 would be necessary in order to have applied a lateral</p> <p>22 vascular neck restraint?</p> <p>23 A Well, at that particular time -- I'm sorry.</p> <p>24 MR. ANDERSON: Go ahead.</p> <p>25 THE WITNESS: At that particular time before our</p> <p style="text-align: right;">Page 63</p>	<p>1 made?</p> <p>2 A Yes, sir.</p> <p>3 Q What board member, if you can recall, said that</p> <p>4 the -- there should be assessment made between each use 11:25:25</p> <p>5 of force?</p> <p>6 A I can't recall who said any of this, so --</p> <p>7 Q Okay. And so you don't recall who said there was</p> <p>8 over 20 applications of force. Did anyone else see any</p> <p>9 assessment?</p> <p>10 A No, sir.</p> <p>11 Q Why was the name of the board member or these</p> <p>12 board members not attached to the statements?</p> <p>13 A Because that's the way that the report has been</p> <p>14 drafted is that it's board member comments. So -- so we 11:25:58</p> <p>15 just use this is just a format that we use.</p> <p>16 Q Okay. That's -- you do that typically of all of</p> <p>17 these Tactical Review Boards?</p> <p>18 A For the most part. I mean, there may be some</p> <p>19 variations here and there as different iterations of the</p> <p>20 report has evolved over the many, many years since, I</p> <p>21 want to say, 2000 maybe '11. 2010, '11, '12. 11:26:28</p> <p>22 There's some where there isn't hardly any</p> <p>23 information, and they've just evolved so -- and it</p> <p>24 depends on what preference that particular assistant</p> <p>25 sheriff had as they were drafting this particular</p> <p style="text-align: right;">Page 65</p>

<p>1 report.</p> <p>2 Q Okay. Then in the next section under "LVNR" it</p> <p>3 says, "Per, SME Mike Bland, from the videos seen Officer</p> <p>4 Lopera is not doing the LVNR consistent with training, 11:26:57</p> <p>5 can't say it is a rear naked choke either, but it is not</p> <p>6 consistent with LVNR."</p> <p>7 Was that the conclusion of the Tactical Review</p> <p>8 Board?</p> <p>9 A These are comments that are made within the board.</p> <p>10 It isn't -- this section right here isn't necessarily a</p> <p>11 conclusion. These are just comments that are made as</p> <p>12 we're deliberating during the information that was</p> <p>13 presented during the Tactical Review Board.</p> <p>14 Q Up above here, I skipped over this. "A Board 11:27:30</p> <p>15 member asked, is there a policy in place in regards to</p> <p>16 intervening on a scene?"</p> <p>17 And the answer was, "Yes, Duty to Intervene."</p> <p>18 What is meant by the duty to intervene?</p> <p>19 A So under duty to intervene, if an officer observes</p> <p>20 an individual that's using significant force on an</p> <p>21 individual, it's his or her responsibility to intervene</p> <p>22 within that incident. 11:27:58</p> <p>23 Q And that would include Sergeant Crumrine?</p> <p>24 A Yes.</p> <p>25 Q Officer Flores?</p> <p style="text-align: right;">Page 66</p>	<p>1 Lopera's hands away from the neck of Mr. Farmer, correct? 11:29:28</p> <p>2 A That is correct.</p> <p>3 Q Officer Crumrine told Officer Lopera to release</p> <p>4 Mr. Farmer twice. Do you recall that?</p> <p>5 MR. McNUTT: Objection, form.</p> <p>6 THE WITNESS: Actually, it was three times.</p> <p>7 BY MR. SAYRE:</p> <p>8 Q Okay, three times. And after he had told him to 11:29:55</p> <p>9 intervene the three times, he never checked to see if he</p> <p>10 had actually released the hold?</p> <p>11 MR. McNUTT: Objection, vague.</p> <p>12 BY MR. SAYRE:</p> <p>13 Q Do you recall that?</p> <p>14 MR. ANDERSON: Objection, form.</p> <p>15 THE WITNESS: No, I'm trying to remember the</p> <p>16 video. No, I can't remember.</p> <p>17 BY MR. SAYRE:</p> <p>18 Q Okay. Did -- after telling -- after Sergeant 11:30:21</p> <p>19 Crumrine told Officer Lopera to release the hold multiple</p> <p>20 times, did he have a duty to intervene to get him to, if</p> <p>21 necessary, to physically release the hold?</p> <p>22 MR. McNUTT: Objection, form.</p> <p>23 MR. ANDERSON: Objection.</p> <p>24 You can answer.</p> <p>25 THE WITNESS: So you don't know what you don't</p> <p style="text-align: right;">Page 68</p>
<p>1 A Yes.</p> <p>2 Q Officer Tran?</p> <p>3 A Yes.</p> <p>4 Q And significant force, that could include a gross</p> <p>5 inappropriate force?</p> <p>6 MR. ANDERSON: Objection, form.</p> <p>7 THE WITNESS: It could. 11:28:23</p> <p>8 BY MR. SAYRE:</p> <p>9 Q If an officer like Crumrine, Flores and Tran</p> <p>10 believed that Officer Lopera was engaged in an</p> <p>11 unconstitutional application of force, would they have a</p> <p>12 duty to interview (sic) and -- to intervene and even</p> <p>13 physically take his hands away from the neck of</p> <p>14 Mr. Farmer?</p> <p>15 MR. ANDERSON: Objection, incomplete hypothetical.</p> <p>16 Go ahead and answer.</p> <p>17 THE WITNESS: So they did intervene, and if they</p> <p>18 didn't -- had not intervened, then they would have been</p> <p>19 in violation of duty to intervene policy, and we would</p> <p>20 have added that here.</p> <p>21 But since the officers did intervene in that</p> <p>22 particular incident, but our concern was that potentially</p> <p>23 Sergeant Crumrine could have did more.</p> <p>24 BY MR. SAYRE:</p> <p>25 Q You say they intervened but nobody took Officer</p> <p style="text-align: right;">Page 67</p>	<p>1 know, and what I mean by that is that Officer Lopera is</p> <p>2 having a tussle with this -- with Mr. Farmer, so we don't 11:30:56</p> <p>3 know whether there's weapons or anything associated with</p> <p>4 Mr. Farmer. Those officers arriving on scene don't know,</p> <p>5 so the key is to get the individual in custody and to</p> <p>6 make sure that the individual is handcuffed. And as soon</p> <p>7 as the individual is handcuffed is when you release the</p> <p>8 hold because the only person that knows whether or not he</p> <p>9 loosened up the hold is Officer Lopera.</p> <p>10 So the issue is that as an officer and a sergeant 11:31:26</p> <p>11 on the scene, you're constantly assessing on whether or</p> <p>12 not you have the correct holds to be able to take the</p> <p>13 individual in custody.</p> <p>14 BY MR. SAYRE:</p> <p>15 Q Wasn't Mr. Farmer rendered unconscious?</p> <p>16 MR. McNUTT: Objection, form.</p> <p>17 MR. ANDERSON: Okay.</p> <p>18 THE WITNESS: That -- so during the initial throes</p> <p>19 of the event, I don't believe Mr. Farmer was unconscious.</p> <p>20 And then as the event continued on, potentially he was</p> <p>21 unconscious. I don't know exactly within the time frame</p> <p>22 of when he -- they first went hands-on to when they 11:31:59</p> <p>23 released when Mr. Farmer went unconscious.</p> <p>24 BY MR. SAYRE:</p> <p>25 Q Do you recall that Officer Flores told Officer</p> <p style="text-align: right;">Page 69</p>

<p>1 Rybacki that "he was out as soon as we got there," 2 meaning when he and Tran got there? 3 A No, sir, I don't recall. 4 Q If Farmer was unconscious at the time that Tran 5 and Flores got there, do you remember when that was? 6 A No, sir. 11:32:31 7 Q Okay. Why don't you take a look at that. Do you 8 have the -- it's in this FIT report. 11:32:56 9 A I'm going. I'm just waiting on the page. 10 Q I'm sorry, I'll get that to you. Take a look at 11 LVMPD 3792? 12 A 3792. 13 Q Actually, 3791. 14 A 3791. Okay. 11:33:30 15 Q All right. At 2:58 it says, "Officer Lopera 16 appeared to put Farmer in some type of neck restraint," 17 okay? 18 All right, now look at 3792. 19 MR. McNUTT: Fred, I'm sorry. What was that time 20 stamp on 3791? 21 MR. ANDERSON: 2:58. 22 MR. McNUTT: 2:58, okay. 11:33:58 23 BY MR. SAYRE: 24 Q Then look at 3792. It says at 3:25, "Officer Tran 25 arrived and said, 'Let him go, Ken.'"</p> <p style="text-align: right;">Page 70</p>	<p>1 A Yes, sir. 2 Q If Farmer was out -- and I'll represent to you 3 that Officer Flores has acknowledged he told Officer 4 Rybacki that Farmer was out when they arrived. If he was 5 out at no later than 3:27, would you agree that there 11:35:59 6 should continue to be no compression on the neck by 7 Officer Lopera after 3:27? 8 MR. McNUTT: Objection, form, misstates the 9 document, misstates the facts in evidence. 10 MR. ANDERSON: Join. 11 BY MR. SAYRE: 12 Q You can answer the question. 13 A So if this is correct along those lines, then the 11:36:24 14 pressure should have been released. 15 Q And failing to release the pressure under the 16 facts that I asked you to assume would be a violation of 17 Mr. Farmer's civil rights? 18 MR. McNUTT: Objection, form. 19 MR. ANDERSON: Objection, form. 20 THE WITNESS: Once again, we don't evaluate that 21 in the Tactical Review Board. What we evaluate is 22 whether or not the officer's actions were within policy 23 and training. And as I stated before, the only person 24 that knows the question to this answer -- or the answer 25 to this question is Officer Lopera. 11:36:59</p> <p style="text-align: right;">Page 72</p>
<p>1 MR. ANDERSON: I've got an objection. The evidence 2 during discovery showed that was not Officer Tran that 3 said that. 4 MR. SAYRE: If you'll let me finish my question, 5 I'll clarify it for you. 6 MR. ANDERSON: I'm sorry. 7 BY MR. SAYRE: 8 Q As Mr. Anderson said, the evidence has shown that 11:34:29 9 the person who said "Let him go, Ken" was not Officer 10 Tran but Officer Crumrine. However, it appears that 11 Officer Tran did arrive at 3:25, and at 3:27, Officer 12 Tran has acknowledged that Officer Lopera -- he heard 13 Officer Lopera say, "Roll him...don't grab my fucking 14 legs." 15 So it's within that time frame of 3:25 to 3:27 11:34:59 16 that Officer Tran and Mr. Flores arrived. 17 MR. McNUTT: Objection, form, misstates the 18 document. 19 BY MR. SAYRE: 20 Q I'm going to ask you to assume that for the 21 purposes of this question. 22 A Okay. 23 Q Now, it says that at 4:11, "Officer Lopera 24 released the hold on Farmer." 11:35:29 25 Do you see that?</p> <p style="text-align: right;">Page 71</p>	<p>1 So -- but I'll stand by what I said. 2 BY MR. SAYRE: 3 Q Okay. But -- I understand what you said. 4 But you also have been trained regarding the case 5 of Graham versus Connors. Are you familiar with that 6 case? 7 A Yes. 8 Q And that talks about the violation of federal 9 civil rights under color of law, correct? 10 A True. 11 Q Fourth Amendment rights? 12 A Uh-huh. 13 Q You agree? Is that a "yes"? 14 A Yes. 15 Q And part of the protection of the Fourth Amendment 11:37:29 16 rights of a civilian is to not allow him to suffer 17 excessive force, correct? 18 MR. ANDERSON: Objection, form. 19 THE WITNESS: Based on Fourth Amendment Graham 20 versus Connor, yes. 21 BY MR. SAYRE: 22 Q So if Lopera, under the facts that I asked you to 23 assume, had to release the hold at 3:27, at that point 24 on, the other officers that were within three feet of 25 him, Crumrine, Tran and Flores, had a duty to physically 11:37:59</p> <p style="text-align: right;">Page 73</p>

<p>1 MR. ANDERSON: Objection to form.</p> <p>2 Go ahead.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. SAYRE:</p> <p>5 Q Take a look at page 11, please.</p> <p>6 Now, it says here under "Summary of Findings"</p> <p>7 regarding Sergeant Travis Crumrine, that "CIRT presented 11:43:29</p> <p>8 three conclusions." One conclusion was modified and one</p> <p>9 was overturned and one was validated. What conclusion</p> <p>10 was overturned, if you know?</p> <p>11 A Actually, I don't recall. I don't remember.</p> <p>12 Those were -- that's -- it's -- it's -- 11:44:00</p> <p>13 MR. SAYRE: If you're going to give him the</p> <p>14 answer, give him the right one.</p> <p>15 THE WITNESS: No, no, it is, and that jogged my</p> <p>16 memory. It was combined so -- yeah, thank you.</p> <p>17 MR. ANDERSON: Sorry.</p> <p>18 THE WITNESS: I'm like overturned. But no, yes,</p> <p>19 now I do. It was brought into the same category.</p> <p>20 BY MR. SAYRE:</p> <p>21 Q I'm sorry, what was brought into the same</p> <p>22 category?</p> <p>23 A The incident management. 11:44:28</p> <p>24 Q I'm sorry, what was that, please?</p> <p>25 A That's on the next page.</p> <p style="text-align: right;">Page 78</p>	<p>1 pursuant to the policy of the Metropolitan Police</p> <p>2 Department.</p> <p>3 A True.</p> <p>4 Q And you agree with these determinations by CIRT?</p> <p>5 A Yes, sir.</p> <p>6 Q And Sheriff Lombardo agrees as well?</p> <p>7 A Yes, sir.</p> <p>8 Q Now, are these failings by Sergeant Crumrine not</p> <p>9 just under the policies of the Metropolitan Police 11:46:29</p> <p>10 Department, but in general in his performance as a</p> <p>11 sergeant?</p> <p>12 A So under this particular incident, we don't bring</p> <p>13 all other incidents into the -- into the determination of</p> <p>14 what particularly goes into these categories. On this</p> <p>15 particular event, these are the shortcomings or the</p> <p>16 failures from a policy and procedure perspective that 11:46:57</p> <p>17 fell upon Sergeant Crumrine.</p> <p>18 Q The next page, please.</p> <p>19 A Sure.</p> <p>20 Q "CIRT concluded by failing to ensure Officer</p> <p>21 Lopera released the neck restraint after being ordered to</p> <p>22 do so, Sergeant Crumrine was in neglect of duty as a</p> <p>23 supervisor. In addition, in reviewing supervisory</p> <p>24 response, CIRT concluded Sergeant Crumrine's response</p> <p>25 was not within standardized LVMPD tactics, training and</p> <p style="text-align: right;">Page 80</p>
<p>1 Q Next page, all right.</p> <p>2 Okay. Under "Incident Management" where all these</p> <p>3 things are crossed out, what specifically are you</p> <p>4 referring to?</p> <p>5 A So under "02. Incident Management 5.2," it was</p> <p>6 overturned and combined with 5.1.</p> <p>7 Q Okay. All right. So what -- it was included in 11:44:59</p> <p>8 5.1?</p> <p>9 A Yes.</p> <p>10 Q And 5.1 said -- it says here under 01 in the last</p> <p>11 sentence of the first paragraph, "Due to Sergeant</p> <p>12 Crumrine failing to follow through on the order given to</p> <p>13 Officer Lopera, 50 seconds elapsed before Officer Lopera 11:45:30</p> <p>14 released the neck restraint."</p> <p>15 That was a conclusion of CIRT?</p> <p>16 A Yes, sir.</p> <p>17 Q Do you agree with that?</p> <p>18 A Yes.</p> <p>19 Q And the sheriff agreed with that?</p> <p>20 A Yes.</p> <p>21 Q Now, there's a series of things that says that</p> <p>22 Crumrine failed to do in the next paragraph, starting 11:45:53</p> <p>23 with accurately assess the situation, include life</p> <p>24 safety, incident stabilization, property preservation and</p> <p>25 so on. All these are failings of Sergeant Crumrine</p> <p style="text-align: right;">Page 79</p>	<p>1 policy." 11:47:29</p> <p>2 You agree with that?</p> <p>3 A Yes, sir.</p> <p>4 Q And the sheriff agreed with that?</p> <p>5 A Yes, sir.</p> <p>6 Q It says here that, "A Board member said, he is a</p> <p>7 weak sergeant, he performed weakly and his officer didn't</p> <p>8 listen to him."</p> <p>9 Do you remember who said that?</p> <p>10 A No, sir.</p> <p>11 Q It would have been a sworn officer?</p> <p>12 A It would have been a member of the Tactical Review</p> <p>13 Board.</p> <p>14 Q And all the members of the board, except for the</p> <p>15 administrative person, would have been -- are sworn 11:47:59</p> <p>16 officers?</p> <p>17 A Yes.</p> <p>18 Q They're not civilians on the Tactical Review</p> <p>19 Board, correct?</p> <p>20 A Yes, sir.</p> <p>21 Q And the administrative person doesn't make</p> <p>22 comments in the deliberation?</p> <p>23 A No, sir.</p> <p>24 Q "A Board member said, part of his job is to look</p> <p>25 out for his people. He should have taken care of his</p> <p style="text-align: right;">Page 81</p>

<p>1 officer. He didn't understand his job as a sergeant." 2 I take it you don't remember who said that? 3 A No, sir. 4 Q Okay. But it was a sworn officer that said that, 11:48:30 5 member of the board, correct? 6 A He made that comment. 7 Q Right. "A Board member said, due to Sergeant 8 Crumrine's inaction, his troop ended up killing someone 9 and still did not admit he could have done more." 10 You don't remember who said that? 11 A No, sir. 12 Q But it was a sworn officer? 13 A It was one of the members from the Tactical Review 14 Board. 15 Q "A Board member said, Sergeant Crumrine could have 16 stopped it. It could have been stopped the first time he 11:48:59 17 said let go. It could have possibly saved Farmer's 18 life." 19 That was said by a sworn officer member of the 20 Tactical Review Board? 21 A Those are comments, yes. 22 Q But you don't remember who said it? 23 A No. 24 Q Take a look at the next to the last paragraph 11:49:26 25 before "Recommended Action." It says in the last</p> <p style="text-align: right;">Page 82</p>	<p>1 Q And that was accepted by the sheriff? 2 A Yes. 3 Q "I recommend that Sergeant Crumrine be 4 non-confirmed as Sergeant and returned to the rank of 5 Police Officer," and that was done? 6 A Yes, sir. 7 MR. SAYRE: I have nothing further. 8 Could we take a short break before you have at it? 9 MR. McNUTT: Sure. 10 VIDEOGRAPHER: We are now off the record at 11 11:51 a.m. 11:51:26 12 (Recess.) 13 VIDEOGRAPHER: We are back on the record. 14 The time is approximately 11:58 a.m. 11:58:27 15 16 EXAMINATION 17 BY MR. ANDERSON: 18 Q Sheriff Kelly, you understand that you're still 19 under oath? 20 A Yes. 21 Q Real quick, you've already testified to a lot of 22 these facts, so just tell me if you agree with this. 23 Officers Crumrine, Tran and Flores arrived on 24 scene after Farmer and Lopera were already on the ground 25 in some form of neck restraint; is that correct?</p> <p style="text-align: right;">Page 84</p>
<p>1 sentence, last two sentences, "Sergeant Crumrine was also 2 asked, 'So when you asked Officer Lopera to stop and he 3 didn't (sic) listen to you, did you feel you had a duty 4 to intervene?' Sergeant Crumrine's response was, 5 'no.'" 6 And the next paragraph, this next paragraph, did 11:49:59 7 you write this? 8 A Yes. 9 Q "Almost three months after this tragic event, 10 Sergeant Crumrine still does not understand it was his 11 responsibility to prevent Officer Lopera from continuing 12 to apply a neck restraint once he gave direction for 13 Officer Lopera to release the restraint. Instead of 14 exerting his authority and demanding Officer Lopera 15 release the hold, he allowed Officer Lopera to maintain 11:50:30 16 the neck restraint for an additional 50 seconds. As a 17 Sergeant it is critical to understand your role and 18 responsibilities as a first-line supervisor; the men and 19 women we lead and the officers (sic) we serve in the 20 community deserve it. Based on the entirety of what 21 occurred in this incident, it appears that Sergeant 22 Crumrine does not understand his role and 23 responsibilities as a first-line supervisor." 24 And that was your assessment? 25 A That was my assessment.</p> <p style="text-align: right;">Page 83</p>	<p>1 A Yes, sir. 2 Q Upon their arrival pursuant to Metro's policies 3 and procedures, what should have been the focus of their 11:58:58 4 actions upon arrival? 5 A Getting him in handcuffs and into custody. 6 Q And you would agree that at times an officer may 7 have a duty to physically intervene someone from using 8 excessive force that they know to be excessive -- 9 A Correct. 10 Q -- outside of policy? 11 A (Witness nodding head up and down.) 12 Q Is that a "yes"? 13 A Yes. 14 Q When would these officers have ever been required 15 to use physical force to remove Lopera's arms? 11:59:26 16 A After the individual was in handcuffs. 17 Q And then towards the end of your questioning, you 18 went through several criticisms of Sergeant Crumrine. Do 19 you remember that? 20 A Along those lines. 21 Q For purposes of your role in this incident, was 22 Sergeant Crumrine evaluated as a supervisor in his role 23 as a sergeant? 24 A Yes. 25 Q So the criticisms of him were based upon the fact</p> <p style="text-align: right;">Page 85</p>

<p>1 MR. McNUTT: Yes, there is.</p> <p>2 MR. SAYRE: When are we going to get to it?</p> <p>3 MR. McNUTT: When I get to it.</p> <p>4 MR. SAYRE: Okay. None of these are questions.</p> <p>5 MR. McNUTT: I didn't interrupt you like that,</p> <p>6 Fred.</p> <p>7 MR. SAYRE: Yes, you did.</p> <p>8 MR. McNUTT: No, I did not.</p> <p>9 MR. SAYRE: Thank you.</p> <p>10 BY MR. McNUTT:</p> <p>11 Q So on page 92, he reiterated the fact that it took 12:16:28</p> <p>12 four officers to handcuff Tashi Farmer, and that Tashi</p> <p>13 Farmer was not passive.</p> <p>14 In your opinion, would it take four Metro officers</p> <p>15 to handcuff a suspect if he was not resisting?</p> <p>16 A If a suspect was not resisting --</p> <p>17 Q Would it take four officers to handcuff him?</p> <p>18 A Depends on under what circumstances, and I guess</p> <p>19 it just kind of depends on what type of event is 12:16:56</p> <p>20 occurring. Is the individual, you know, under the</p> <p>21 influence of narcotics and has the potential to fly off</p> <p>22 the handle and go crazy? I don't know. So it just kind</p> <p>23 of depends on the circumstances that you're presented</p> <p>24 with.</p> <p>25 Q Okay. Do you believe Sergeant Crumrine when he</p> <p style="text-align: right;">Page 98</p>	<p>1 Q I asked Detective Kirk- -- you've got me doing it,</p> <p>2 Fred.</p> <p>3 I asked Detective Kirkegard when in the arrest 12:18:30</p> <p>4 report -- we'll look at that in a minute -- where it says</p> <p>5 Ken Lopera, Officer Lopera, released the hold, I asked</p> <p>6 her whether or not that was releasing pressure on the</p> <p>7 neck or whether that was Officer Lopera removing his</p> <p>8 encircling arm from Tashi Farmer's neck.</p> <p>9 And she said it was the latter; that when it says</p> <p>10 in the arrest report that at this time stamp that that's</p> <p>11 when the hold was released, that that was when the 12:18:59</p> <p>12 encircling arm was removed from Tashi Farmer.</p> <p>13 Do you understand that?</p> <p>14 A Yes.</p> <p>15 Q Or did you understand that before today?</p> <p>16 A No, you're explaining it -- I don't recall all of</p> <p>17 the things associated with this particular board a</p> <p>18 year-and-a-half ago, but I understand exactly what you</p> <p>19 just said.</p> <p>20 Q Would you have any reason to disbelieve Detective 12:19:26</p> <p>21 Kirkegard's testimony under oath in this deposition?</p> <p>22 A Well, if she's under oath, I wouldn't -- I would</p> <p>23 think that she would come in here and be truthful.</p> <p>24 Q Back to the question about LVMPD policy, because I</p> <p>25 asked her that, too, and she said it was LVMPD's policy</p> <p style="text-align: right;">Page 100</p>
<p>1 says that Tashi Farmer resisted throughout the</p> <p>2 handcuffing process?</p> <p>3 A The video, if I recall correctly, doesn't show</p> <p>4 that.</p> <p>5 Q What video have you watched? 12:17:27</p> <p>6 A From a year-and-a-half ago, which would have been</p> <p>7 the body worn camera video, and I think there's some</p> <p>8 video from the Venetian, but it's been a minute.</p> <p>9 Q You didn't watch any video in the last month to</p> <p>10 prepare for your deposition?</p> <p>11 A No.</p> <p>12 Q So look back to page 11.</p> <p>13 A Yes, sir.</p> <p>14 Q So in that same middle paragraph it says, "Due to 12:17:58</p> <p>15 Sergeant Crumrine failing to follow through on the order</p> <p>16 given to Officer Lopera, 50 seconds elapsed before</p> <p>17 Officer Lopera released the neck restraint."</p> <p>18 Do you see that?</p> <p>19 A Yes, sir.</p> <p>20 Q And that comes from CIRT, correct?</p> <p>21 A Yes.</p> <p>22 Q So it's incorporated in this, and you signed off</p> <p>23 on it because you had trust and confidence that CIRT did</p> <p>24 the investigation, correct?</p> <p>25 A Correct.</p> <p style="text-align: right;">Page 99</p>	<p>1 to keep the encircling arm in place until the suspect is</p> <p>2 in handcuffs. 12:19:59</p> <p>3 Would you disagree with her testimony?</p> <p>4 A Well, that's their job to know policy and</p> <p>5 procedure, so I would not disagree with that.</p> <p>6 Q That's what CIRT's looking at is policy and</p> <p>7 procedure, right?</p> <p>8 A Correct.</p> <p>9 Q Are you aware that Metro's policy and procedure</p> <p>10 expert also testified -- so this is Mr. Anderson and your</p> <p>11 expert -- also testified that that is LVMPD's policy,</p> <p>12 specifically to keep the encircling arm of an LVNR in 12:20:27</p> <p>13 place until the suspect is in handcuffs?</p> <p>14 A Yes, I agree with what you're saying. I thought</p> <p>15 you were just making a statement.</p> <p>16 MR. McNUTT: Go to -- we'll mark this as Exhibit 12:20:48</p> <p>17 3.</p> <p>18 (Deposition Exhibit 3 marked.)</p> <p>19 MR. McNUTT: Would you pass one of them down to</p> <p>20 the court reporter, Fred.</p> <p>21 BY MR. McNUTT:</p> <p>22 Q Sheriff Kelly, have you seen this document before?</p> <p>23 A No.</p> <p>24 Q Would you go to page 3 of the document?</p> <p>25 A Okay. 12:21:30</p> <p style="text-align: right;">Page 101</p>

<p>1 A Yes.</p> <p>2 Q Are you aware of the fact that Tashi Farmer did,</p> <p>3 in fact, have illegal methamphetamines in his system at</p> <p>4 this time?</p> <p>5 A At that time?</p> <p>6 Q At the time of these events.</p> <p>7 A After the fact.</p> <p>8 Q Everything we know is after the fact.</p> <p>9 A I'm just saying after the fact. What are we</p> <p>10 getting clarification for? Are you talking about at this</p> <p>11 particular moment in time or after?</p> <p>12 Q I'm not asking about Ken Lopera. I'm asking about</p> <p>13 you. Are you aware that it's been shown that Tashi</p> <p>14 Farmer was, in fact, under the influence of illegal 12:28:00</p> <p>15 methamphetamines?</p> <p>16 A So I do recall -- well, obviously I can't remember</p> <p>17 a year-and-a-half ago what was come up in those</p> <p>18 particular boards, but -- I just can't remember at that</p> <p>19 time.</p> <p>20 Q Okay.</p> <p>21 A Because I haven't reviewed these documents,</p> <p>22 obviously.</p> <p>23 Q And that's just fine.</p> <p>24 My question is, at any point up to and including</p> <p>25 today, have you become aware of the fact that Tashi</p> <p style="text-align: right;">Page 106</p>	<p>1 inside the stairwell of a casino?</p> <p>2 A No.</p> <p>3 Q Do you know if the radios can get a signal out of</p> <p>4 the inside of a concrete and steel stairwell at the</p> <p>5 casino?</p> <p>6 A No, that's something the radio guys would know, 12:30:30</p> <p>7 though.</p> <p>8 Q So can anybody say for sure that Ken Lopera did</p> <p>9 not transmit his location?</p> <p>10 A Well, the technology piece I'm not sure on, but</p> <p>11 there are some things that -- there are things that</p> <p>12 trigger through dispatch when you key the mic.</p> <p>13 Q Do you have an opinion as to why Officer Lopera -- 12:30:54</p> <p>14 excuse me, Officer Lif is not right on Officer Lopera's</p> <p>15 hip at this point?</p> <p>16 A No.</p> <p>17 Q The testimony she gave was that she set the coffee</p> <p>18 down. Isn't it normal procedure that if you and I are</p> <p>19 working as partners and that you contact a suspect, that</p> <p>20 I'm your cover?</p> <p>21 A Correct.</p> <p>22 Q You don't have to tell me that, right?</p> <p>23 A You shouldn't.</p> <p>24 Q Should she have been right on Officer Lopera's hip 12:31:30</p> <p>25 right there?</p> <p style="text-align: right;">Page 108</p>
<p>1 Farmer was under the influence of a controlled 12:28:28</p> <p>2 substance?</p> <p>3 A I'm assuming that today, yes, I'm aware of it.</p> <p>4 Q Fair enough. And being under the influence of</p> <p>5 illegal methamphetamines is, in fact, a crime, right?</p> <p>6 A Correct.</p> <p>7 Q We're going to let this play for a minute.</p> <p>8 Oh, one question. You don't wear a body worn</p> <p>9 camera, do you?</p> <p>10 A No.</p> <p>11 Q Maybe you should have for today's depo, right? 12:28:57</p> <p>12 A No, I'm fine.</p> <p>13 Q So there's no -- from what I understand, there's</p> <p>14 no sound for the first approximate 20 or 30 seconds.</p> <p>15 A Somewhere along there.</p> <p>16 Q Is that consistent with your knowledge?</p> <p>17 A Yes, sir.</p> <p>18 Q So that's why we don't have sound?</p> <p>19 A It's true.</p> <p>20 Q It's not while we're on mute, correct?</p> <p>21 A No.</p> <p>22 Q We're going to hear some sound come up at some</p> <p>23 point, but I do not need you to record the words that are</p> <p>24 stated on the recording. 12:29:22</p> <p>25 Do you know how effective the officers' radios are</p> <p style="text-align: right;">Page 107</p>	<p>1 A In my opinion, yes.</p> <p>2 Q So you recognize this as being outside the casino</p> <p>3 at this point?</p> <p>4 A Yes, sir.</p> <p>5 Q And you don't have any problem with Officer Lopera</p> <p>6 pursuing Tashi Farmer, correct? 12:32:00</p> <p>7 A No.</p> <p>8 Q It's a crime to trespass in Nevada, right?</p> <p>9 A True.</p> <p>10 Q And would that have been what Tashi Farmer was</p> <p>11 doing when he ran into the, quote, back of the house in</p> <p>12 the casino in that restricted area?</p> <p>13 A Just kind of depends.</p> <p>14 Q On whether he had permission?</p> <p>15 A Or at that particular point the officer doesn't</p> <p>16 even know if he works there or not. Just -- the</p> <p>17 assumption part is where you come into play. 12:32:30</p> <p>18 Q If an officer believes that a suspect is under the</p> <p>19 influence of a controlled substance and then that person</p> <p>20 flees into an employee area only, should he pursue?</p> <p>21 A I would agree, yes.</p> <p>22 Q I mean, you're in charge of all -- I think, as you</p> <p>23 said, you're responsible for all crime in the valley.</p> <p>24 A That is true.</p> <p>25 Q Which is an interesting way of saying it. I mean,</p> <p style="text-align: right;">Page 109</p>

<p>1 you're at least allowed to use the taser three times 2 before you're supposed to think about an alternative 3 means of force. 4 Does that refresh your recollection of policy? 5 A Not on the amount of uses. But before you 6 transition, that part rings a bell. 12:37:29 7 Q If you were using a taser and after three times it 8 doesn't work, what would you recommend transitioning to 9 if the suspect is still resisting? 10 A CAP-STUN. 11 Q What does that mean? 12 A I would pull out my CAP-STUN, which is chemical 13 spray, and spray it in their face. 14 Q And do you think that would gain compliance? 15 A Most of the time it does, in my opinion. 12:37:59 16 Q That's the next use of force? 17 A That's just -- you asked me my opinion on what I 18 would use, so that's something that I would do. 19 Q Okay, got you. So can Officer Lopera, is it 20 reasonable for him -- I know you might do something 21 else -- is it reasonable for him to give a second tase 22 charge to Tashi Farmer at this point? 23 A So it depends on what level of resistance that the 24 individual is in, so because that's where the assessment 25 comes into play. 12:38:30</p> <p style="text-align: right;">Page 114</p>	<p>1 observations, correct? 2 So is the individual being aggressive towards the 3 officer at that point where you need to administer that 4 second tase? 5 Q If you direct me to lay on the ground, and I don't 6 do it and I get up moving towards you, are you going to 7 assume that I have good intent? 12:39:58 8 A Here's the thing. There was no opportunity. The 9 guy reached over to look at his shoe or grab his shoe. 10 If you're really getting up and getting ready to 11 attack -- this is just my opinion -- you're not going to 12 do what that guy did. 13 Q And we have the calm light of detached reflection 14 to hit pause on this -- 15 A True. 16 Q -- video, right? 17 A You're correct. 18 Q Do you think it's reasonable to hold Ken Lopera to 12:40:26 19 this standard that we're looking at here? 20 A Well, as you said earlier, it's the officer's 21 perception, so -- but when you evaluate the totality of 22 the circumstances and the parameters from when you 23 operate within policy, we determined that he was outside 24 of policy. 25 Q Isn't it true that Graham v. Connor --</p> <p style="text-align: right;">Page 116</p>
<p>1 Q Could reasonable people differ on that answer? 2 A That's -- you're asking me my opinion, correct? 3 Q No, that's correct, but I'm just saying could 4 another officer come to a different conclusion? 5 A Yes. 6 Q Do we generally give the benefit of the doubt to 7 the officer in the fight? 8 A After the fact. 9 Q In terms of what he's sensing the proceeding? 10 A The officer's perception. 11 Q And the speed of the fight? 12 A True. 13 Q So there's the second taser strike, right? So in 12:38:59 14 that window, do you think there was enough time for 15 Officer Lopera, he assessed that Tashi Farmer was not 16 complying with his verbal commands; he assessed that 17 Tashi Farmer was not lying still as he had directed him; 18 he assessed that had Tashi Farmer was, at a minimum, 19 trying to get up off of the ground. 20 What -- do you agree with those things that I just 21 said? Do you think there's anything different than the 22 video we just watched? 12:39:30 23 A Like I said, when you look at it, you don't give 24 the individual an opportunity. Obviously, you can see 25 that there's something going on based on the officer's</p> <p style="text-align: right;">Page 115</p>	<p>1 MR. SAYRE: I think you're interrupting him. He 2 was not finished with his answer. 3 BY MR. McNUTT: 4 Q Were you done? 5 A It's fine. Go ahead. 6 Q I didn't mean to interrupt you. 7 A No, you're good. 8 Q Isn't it true that Graham v. Connor says that 12:40:59 9 that's exactly what we're not supposed to do is to sit 10 here with 20/20 hindsight and -- 11 A You're correct. 12 Q So do you give some deference to what officer 13 Lopera is doing and seeing here? Isn't it true that 14 there could have been a knife or something in Tashi 15 Farmer's shoe that he was reaching for? 16 A So those are the reasons why we have an 17 administrative process, and he chose not to answer any 18 questions associated with this administrative review. 12:41:29 19 Now, had Officer Lopera came in and explained 20 things the way that you're explaining them, that would 21 have been a -- potentially had a different opinion of the 22 board. 23 But Officer Lopera, during this administrative 24 proceeding, failed to say anything. So that's the part 25 that I'm getting at. That's the reason why we have this</p> <p style="text-align: right;">Page 117</p>

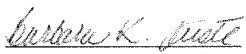
<p>1 so that the officer can come in and explain what you're 2 talking about.</p> <p>3 Q I understand that, and I can't change that. 12:41:59</p> <p>4 A No, no, you can't.</p> <p>5 Q So we are here today, so that's where I'm asking 6 you questions that I have as I watched the video.</p> <p>7 When I read the CIRT report that says -- and the 8 arrest report from Alsup -- that says there was no 9 assessment, and I see a good seven seconds where he, in 10 fact, assessed, he's at three feet away, the suspect is 11 not complying with the commands, that brings to mind a 12:42:28 12 question to me, and you're the guy that I have sitting 13 here to answer them.</p> <p>14 So the question remains, is it reasonable for Ken 15 Lopera to trigger -- to cycle the ECD again.</p> <p>16 A Based on his perception, correct? Because --</p> <p>17 Q Yes, based on his perception.</p> <p>18 A Me myself personally looking at it, the answer is 19 no.</p> <p>20 Q Okay.</p> <p>21 A But if we're referring to his perception, the only 22 one that can answer that question is him because as you 12:43:00 23 said, 20/20 hindsight which is exactly what we're doing 24 here together, he's the only one that can say yeah, I did 25 do this or I did do that and I thought he had this or I</p> <p style="text-align: right;">Page 118</p>	<p>1 Q And that's fair, but I'll just tell you that 12:44:29 2 there's nowhere in the CIRT report where it goes in 3 detail like this. Nowhere.</p> <p>4 A Well, then, that's something that probably needs 5 to be corrected.</p> <p>6 Q That's deficient, right?</p> <p>7 A If it's not there.</p> <p>8 Q So based upon what you've seen here right now, is 9 Sergeant -- or excuse me -- Officer Lopera authorized to 10 cycle his taser the second time?</p> <p>11 A No, I didn't say that.</p> <p>12 Q I'm asking you that.</p> <p>13 A No, because we determined all subsequent tasers 12:44:59 14 were outside policies.</p> <p>15 Q No, I know that was the determination when you had 16 the Tactical Review Board. That was then, but now this 17 is now.</p> <p>18 And as you and I are sitting here looking at it, 19 I'm asking you with these additional questions and facts 20 as you see them, is he authorized to cycle that taser a 21 second time?</p> <p>22 A I would say no.</p> <p>23 Q Why?</p> <p>24 A Because you -- as an individual is getting ready 25 to -- as you've said as we slow it down -- getting ready 12:45:28</p> <p style="text-align: right;">Page 120</p>
<p>1 thought he had that.</p> <p>2 Q So if Officer Lopera had participated in the 3 administrative process like you're talking about and said 4 the things that I just said, would you have found that 5 the second cycling of the taser was within Metro policy? 12:43:26</p> <p>6 A It depends on the individual officer's ability to 7 articulate the reasons why they did what they did.</p> <p>8 Q What if he said it a little bit better than what I 9 said today? Let's assume that I wasn't very articulate.</p> <p>10 A But see, there you go. It's just that's -- it all 11 depends on -- we're walking ourselves through this video. 12 Officer Lopera is articulating the reasons why he did 13 what he did because that's what we need to do to justify 14 the reasons why we employ the use of force, correct? 12:43:57</p> <p>15 Q I'm not an investigator, I'm just a lawyer. But 16 if I was investigating this as a member of the CIRT team, 17 my analysis would have included the time between the 18 taser strikes as well as the conduct of the suspect.</p> <p>19 Would that have been reasonable to include?</p> <p>20 A Yes.</p> <p>21 Q Did it include that?</p> <p>22 A I can't -- from the totality of the entire 23 investigation?</p> <p>24 Q Yes.</p> <p>25 A I can't remember exactly what was said.</p> <p style="text-align: right;">Page 119</p>	<p>1 to turn over or roll over or grab his shoe, do we really 2 know exactly what the suspect is trying to do? Because 3 in my opinion, if the suspect was violent towards the 4 officer, he wouldn't be doing what he's doing, taking his 5 time, you know, you'd be a little bit more aggressive. 6 My opinion.</p> <p>7 Q I'm sorry.</p> <p>8 A My opinion.</p> <p>9 Q Aren't we using -- "we" being Officer Lopera -- 10 aren't we using nonlethal force at this stage? 12:45:55</p> <p>11 A True.</p> <p>12 Q So nonlethal force is authorized when the suspect 13 isn't necessarily being violent, correct?</p> <p>14 A Correct.</p> <p>15 Q I mean LVNR is authorized when a suspect is not 16 being violent. It's a compliance control technique?</p> <p>17 A True, at that time it was.</p> <p>18 Q So is a Taser, right?</p> <p>19 A Yes.</p> <p>20 Q So Tashi Farmer doesn't have to be acting 21 violently towards Ken Lopera. He's not complying with 22 his verbal commands, correct?</p> <p>23 A So it depends, once again, what level they 12:46:28 24 determined his resistance was in at this particular 25 moment because you have -- and don't quote me here</p> <p style="text-align: right;">Page 121</p>

<p>1 because I'm going off the top of my head. You have 2 compliance, you have active resistance, you have 3 aggressive resistance, and aggravated aggressive 4 resistance. 5 Q So -- I'm sorry. 6 A So as you assess what state is Mr. Farmer in, is 7 he being compliant? Obviously not. Is he active 12:46:56 8 resistance? Because the next category is aggressive 9 resistance, which is fists, punches and all these types 10 of things. 11 So at what point or what level is he in at that 12 particular moment after he deploys his initial taser, and 13 this is just from me looking at it from my perspective, 14 not Officer Lopera's perspective. 15 Q And I understand that and I appreciate that, and I 16 did almost interrupt you. 12:47:29 17 A Go ahead. 18 Q You asked yourself the same questions I wanted to 19 ask, so would you agree with me that Tashi Farmer is not 20 compliant in this video? 21 A No, he's not compliant. 22 Q Now, the next level up is active resistance, 23 correct? 24 A If I remember correctly, yes. 25 Q And the CIRT report said that he was actively</p> <p style="text-align: right;">Page 122</p>	<p>1 Q Would hand strikes be authorized in an active 2 resistance stage -- or excuse me, aggressive resistance 3 stage? 4 A Aggressive, yes. 5 Q Let's watch a little further. 12:49:04 6 I'm going to try to get this to you. We're at 7 2:25 on the tape, and on the arrest report at 2:27 it 8 says, "Farmer replied, 'OK, sir.'" 9 Now you've heard Farmer's voice a few times on the 10 tape, right? 11 A Yeah. 12 Q So let's listen to the next voice. 12:49:53 13 So let's watch right around 2:27 and listen for 14 the words, "Okay, sir." Did you hear, "Okay, sir"? 15 A Yes. 16 Q Do you want me to replay it? 17 A No, I heard it. 18 Q Is that Tashi Farmer? 12:50:28 19 A I can't tell who that is. 20 Q That's a security guard named Mr. Infantino, but 21 on the arrest report it attributes those compliant words 22 to Mr. Farmer. Okay. Do you understand that? 23 A Uh-huh. 24 Q So that's an error in the arrest report, right? 25 A Well, I would assume if you are saying that that</p> <p style="text-align: right;">Page 124</p>
<p>1 resisting. Do you agree with that? 2 A Yes. 3 Q That's what the Tactical Review Board found, that 4 Tashi Farmer was, in fact, actively resistant, right? 12:47:56 5 A True. 6 Q So under active resistance, Ken Lopera is 7 authorized to use a taser, correct? 8 A So I can't recall exactly what the force continuum 9 on the wheel says or what it says at that particular 10 point, so I can't really answer. Those are questions 11 that Bland and those guys, because it's just -- that's 12 something that I'm not -- that I don't keep up on like, 13 you know, I did a couple years ago. 14 Q Understood. 15 Now let's talk about the next level up, aggressive 12:48:29 16 resistance, right? That's the next level up? 17 A Yes. 18 Q Is there any doubt in your mind that at aggressive 19 resistance, that Officer Lopera is allowed to use 20 additional taser strikes? 21 A Aggressive resistance? That means that the 22 subject is actively trying to harm the officer. 23 Q With a punch or a kick? 24 A A punch or a kick or something along those lines. 25 So a taser would be authorized. 12:48:56</p> <p style="text-align: right;">Page 123</p>	<p>1 was the security guard. 2 Q Right. 12:50:58 3 MR. SAYRE: Could we take a break? We've been at 4 it for an hour now. 5 MR. McNUTT: We're almost done. 6 MR. SAYRE: Oh, okay. 7 BY MR. McNUTT: 8 Q We're at 2:23 of the video. I don't need you to 9 look at that. I'm just marking it for the court 10 reporter. 12:51:39 11 Did you see a strike? 12 A No. 13 Q Let's back it up. I want you to watch for Tashi 14 Farmer striking Ken Lopera. Did you see it there? 12:51:45 15 A No, actually. Did you? 16 Q Yes. 17 A Okay, because -- 18 Q Even Scott Devoe, which is plaintiff's expert, 19 agreed -- 20 A Maybe I'm just not looking hard enough because -- 21 Q You can hear it, too. Listen to it. You didn't 12:52:13 22 hear contact with Officer Lopera's body? 23 A I heard something, and here's the thing. Here's 24 the thing. I'm looking at it just like you are, and if I 25 see the -- slow it -- go back just a tad. Okay.</p> <p style="text-align: right;">Page 125</p>

<p>1 Q It's unfortunately not that precise. I can replay 2 it. 12:52:52 3 A Okay. I saw something, but -- did we -- go 4 ahead. 5 Q In the frame before Tashi Farmer's hand, you saw 6 his right hand come loose up at the top of the frame, 7 right? 8 A Uh-huh. 9 Q And you just heard something hit right near the 10 mic on Officer Lopera's body worn cam, right? 11 A I heard something. 12 Q And we saw a flash come towards him, yes? 13 A I saw a flash. 12:53:29 14 Q So if you're watching this video, would you agree 15 with me that Tashi Farmer is not compliant with all of 16 the officers that are there at this point, their 17 commands? Just not compliant. 18 A At that point, he's not compliant. 19 Q Would you agree that at a minimum, he is actively 20 resisting? 21 A Actively resisting. 22 Q Now, now that you've seen the punch and heard the 12:53:57 23 punch, would you agree that he's aggressively 24 resisting? 25 A So that's where we differ because I can't tell if</p> <p style="text-align: right;">Page 126</p>	<p>1 you going to make speeches? 2 MR. McNUTT: Are you going to withdraw him? 3 MR. SAYRE: Are you going to ask questions or are 4 you going to make speeches? 5 MR. McNUTT: Well, since you brought these issues 6 up -- 7 MR. SAYRE: I didn't bring it up. 8 MR. McNUTT: Sure you did. 9 MR. SAYRE: You're the one that brought it up. 10 MR. McNUTT: Would you like to take a break? Is 11 that what this is really about? 12 MR. SAYRE: I asked for it, but you said we're 13 almost done. 14 MR. McNUTT: You're under physical duress. I 15 understand. We'll take a break, five-minute break. 16 VIDEOGRAPHER: We're going off the record. 17 The time is approximately 12:55 p.m. 18 (Discussion off the record.) 12:57:32 19 VIDEOGRAPHER: We are now back on the record. 20 The time is approximately 12:57 p.m. 21 BY MR. McNUTT: 22 Q We're back on the record, Sheriff Kelly. 23 Appreciate your time this morning. 24 So just a final follow-up question or two. 25 At the juncture that we're watching the video</p> <p style="text-align: right;">Page 128</p>
<p>1 that's him punching, or even whether or not that is a 2 punch. And I'm looking at the same thing you're looking 3 at, but I just -- it's really fast. 4 Q Who else could have punched Officer Lopera 5 there? 6 A Are you assuming that's a punch? That's what I'm 7 saying. Did any of the individuals there that witnessed 8 this say that a punch was thrown by Mr. Farmer? 12:54:27 9 Q Well, I don't know that -- 10 MR. SAYRE: No. 11 BY MR. McNUTT: 12 Q -- the other officers -- 13 MR. McNUTT: Fred, that would be called coaching a 14 witness. 15 MR. SAYRE: He asked you a question. We're going 16 to answer it. 17 MR. McNUTT: You're going to answer the question? 18 MR. SAYRE: I did. I answered it because you 19 won't. You're making up this thing about a punch, and 20 there is no such thing. 21 MR. McNUTT: Fred, are you going to disqualify or 22 withdraw your own expert who said on video under oath 23 that that was a strike by Tashi Farmer against Officer 12:54:56 24 Lopera? That's your expert, Fred. 25 MR. SAYRE: Are you going to ask questions or are</p> <p style="text-align: right;">Page 127</p>	<p>1 where we were discussing whether or not there was a 12:57:57 2 strike against Officer Lopera, do you know from your 3 recollection or the investigation whether the other Metro 4 officers were present at that point when -- before the 5 neck restraint was applied? 6 A I don't believe so. 7 Q Do you know who the other officer -- or excuse me, 8 who the other individuals were that appear to be around 9 Officer Lopera in the frame of the video? 10 A I believe that they're security guards associated 11 with the Venetian. 12:58:30 12 MR. McNUTT: I don't have any further questions. 13 MR. ANDERSON: I don't have any further questions. 14 15 FURTHER EXAMINATION 16 BY MR. SAYRE: 17 Q I just have a couple. If an officer engages in 18 burglary while he's on the job, is that outside of 19 policy? 20 A Yes. 21 Q It's also a crime, correct? 22 A Yes. 23 Q If an officer engages in excessive force such that 24 it violates the Fourth Amendment rights of an individual, 12:58:58 25 that's outside of policy, correct?</p> <p style="text-align: right;">Page 129</p>

1 A From an agency perspective, it is.
2 Q It's also a crime, correct?
3 MR. ANDERSON: Objection to form.
4 MR. McNUTT: Form.
5 THE WITNESS: That would be up to the courts,
6 obviously, to make that determination as in the case of
7 the burglary.
8 BY MR. SAYRE:
9 Q In other words, something that is outside of
10 policy could be in the right circumstances a crime,
11 depending on the circumstances and facts?
12 A Yes.
13 Q And it could be a violation of the Fourth
14 Amendment, depending on the circumstances and the facts?
15 A As the courts make that determination, yes. 12:59:29
16 MR. SAYRE: I have nothing further, thank you.
17 MR. McNUTT: Thank you for your time.
18 VIDEOGRAPHER: We are off the record at 12:59 p.m.
19 This concludes today's testimony given by Tim
20 Kelly. 12:59:52
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24
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1 I, the undersigned, a Certified Court Reporter of
2 the State of Nevada, do hereby certify:
3 That the foregoing proceedings were taken before
4 me at the time and place herein set forth; that any
5 witnesses in the foregoing proceedings, prior to
6 testifying, were duly sworn; that a record of the
7 proceedings was made by me using machine shorthand which
8 was thereafter transcribed under my direction; that the
9 foregoing transcript is a true record of the testimony
10 given.
11 Further, that before completion of the
12 proceedings, review of the transcript [XX] was [] was
13 not requested.
14 I further certify I am neither financially
15 interested in the action nor a relative or employee of
16 any attorney or party to this action.
17 IN WITNESS WHEREOF, I have this date
18 subscribed my name.
19
20 Dated: November 8, 2018
21
22
23 
24 BARBARA K. JUSTL, RPR
25 CCR No. 878

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1
2 I, ASSISTANT SHERIFF TIM KELLY, do hereby declare
3 under penalty of perjury that I have read the foregoing
4 transcript; that I have made any corrections as appear
5 noted, in ink, initialed by me, or attached hereto; that
6 my testimony as contained herein, as corrected, is true
7 and correct.
8 EXECUTED this _____ day of _____,
9 2018, at _____,
10 (City) (State)
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16 ASSISTANT SHERIFF TIM KELLY
17 VOLUME I
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